118-82

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 198.

JUAN S. HART, ADMINISTRATOR OF THE ESTATE OF SIMEON HART, DECEASED, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED FEBRUARY 27, 1883.

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JUDD & DETWEILER, PRINTERS, WASHINGTON.

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1 In the Court of Claims, December Term, 1873.

SIMEON HART, for the use of HENRY B. HART,
versus
THE UNITED STATES. } No. 7908.

I.—*Petition. Filed January* 9, 1874.

To the honorable the Chief Justice and judges of the United States Court of Claims:

The petition of Simeon Hart, a citizen of the United States and a resident of El Paso, State of Texas, respectfully represents:

1st. that on the 14th day of October, A. D. 1873, the honorable Secretary of War transmitted to this court under the provisions of section seven of the act of Congress approved June 25, 1868, the claim of Henry B. Hart, as the assignee of Simeon Hart, for examination, and the said claim is duly entered upon the docket of said Court of Claims as No. 7908.

2d. That this claim is presented in the name of Simeon Hart for the use of Henry B. Hart, and whatever judgment may be rendered in the above-entitled cause is for the exclusive use and benefit of the said Henry B. Hart, as will more fully appear from a certain paper transmitted with the papers in said cause, a copy of which is hereto attached, marked Exhibit D.

2 3d. That the United States is justly indebted to your petitioner, and your petitioner is justly entitled to recover of and from the United States the sum of fifty thousand three hundred and ninety-one dollars and fifty-two cents ($50,391.52); and for a more complete and perfect statement of the indebtedness of the United States to your petitioner your petitioner states and shows to the court the following specific items of claim or causes of action:

First. That previous to the 1st day of May, A. D. 1861, and, as your petitioner now believes and states, some time in the month of March of that year, the United States, acting by its duly authorized military agents, purchased from your petitioner, and your petitioner sold and delivered to the United States at Fort Bliss, in the State of Texas, at a price agreed upon between the said authorized agents of the United States and your petitioner, a quantity of flour, for which your petitioner received from the officer or agent of the United States to whom the said flour was sold and delivered certified vouchers in the usual form, showing the quantity of flour furnished by your petitioner to the United States and the amount to be paid therefor by the United States; and your petitioner avers that the amount agreed to be paid by the United States to your petitioner in consideration of the sale and delivery to the United States of the said flour was the sum of two thousand nine hundred and thirty-seven dollars and fifty-two cents ($2,937.52).

Second. That previous to the 21st day of June, A. D. 1861, your petitioner had sold and delivered to the United States, under certain contracts made between your petitioner and John B. Grayson, who was a brevet lieutenant colonel and commissary of subsistence

in the United States army, and who was acting in that behalf for and on behalf of the United States, certain quantities of flour, for which your petitioner had received from the officer to whom
3 the same was sold and delivered for and on account of the United States certified vouchers in the usual form, specifying the quantity of flour sold and the price to be paid therefor; but your petitioner avers that in the said vouchers so as aforesaid issued to and received by your petitioner there were certain errors in the amount therein stated as the sum of money which your petitioner was by said vouchers entitled to receive of and from the United States; and your petitioner further states that, in order to correct the said errors and secure to your petitioner the full amount of money due and owing to your petitioner on account of the said vouchers, the said Brevet Lieutenant Colonel John B. Grayson, acting for and on behalf of the United States, did make, execute, and deliver to your petitioner a certified voucher in the words and figures following, viz:

The United States to Simeon Hart, Dr.

1861.		
June 21.	To error in voucher No. 5, second quarter, 1861, being for 32,000 lbs. flour, at 12 cts. per lb., in lieu of 13 cts.; 12,100 lbs. as per contract June 28, 1860	$121 00
"	And 20½ cts. per lb. for 19,900, as per contract of November 3, 1860	1,691 50
"	And also error in voucher No. 9, 2d quarter, 1861, being for 17,800 lbs. of flour, at 12 cts. per lb., in lieu of 20½ cts. per lb., as per contract Nov. 3, 1860	1,513 00
	Making total in error	$3,325 50

Error on 1st return, 1 ct. per lb.; on the 2d and 3d returns, 8½ cts. per lb.

4 I certify on honor that the above account is correct and just; that this flour has been faithfully issued; that I have accounted for this flour by the receipts of officers duly qualified to receive the same; that it was purchased at the prices mentioned and contracted for (see contracts of 28th and 3d of November, 1860); and that Judge Hart is entitled to the amount specified on the face of this account, and I have not paid this account, owing to the order of the Secretary of War, through the Commissary General, of 11th of May, 1861.

JNO. B. GRAYSON,
Bvt. Lieut. Col. and C. S.

And your petitioner avers that no part of the sum of money specified in the said voucher has ever been paid to your petitioner by the United States.

Third. That previous to the 1st day of May, A. D. 1861, the United

States was indebted to your petitioner in the further sum of twelve thousand one hundred and thirty-five dollars and thirty-five cents ($12,135.35) for corn sold and delivered to the United States and for corn-sacks furnished, in which the corn so sold and delivered to the United States was contained at the time of the sale and delivery thereof to the United States, and also for foraging and taking care of public animals at various times between the 25th day of November, A. D. 1860, and the 22d day of February, A. D. 1861. And your petitioner avers that the several items of the said claim or indebtedness of the United States to your petitioner last above stated are more specifically stated and set forth in the copy of the paper hereto attached and marked Exhibit A; and your petitioner prays that the same may be taken as a part of this petition.

Fourth. That the United States, on the 1st day of July, A. D. 1861, was indebted to your petitioner in a certain other sum
5 of money, to wit, in the sum of twenty thousand eight hundred and fifty-four dollars and twenty-five cents ($20,854.25), being the amount of certain checks or drafts drawn by the United States, through its authorized officers and agents, upon the Assistant Treasurers of the United States in the cities of New York and New Orleans. Your petitioner further states the said checks or drafts were drawn by the said officers and agents of the United States at divers dates and at times between the 7th day of May, A. D. 1860, and the 9th day of June, A. D. 1861, and that all of said checks or drafts acquired by your petitioner in consideration of money paid or army supplies furnished to the quartermaster's, commissary, and pay departments of the United States Army; and your petitioner further states that the money and supplies so as aforesaid furnished by your petitioner in consideration of the delivery to your petitioner of the said checks or drafts was for the use of, and was used in the military service of, the United States, by the authorized officers and agents of the United States. Your petitioner further states that he claims cost of protest, interest, and commercial damage upon the said checks or drafts and each of them, for the reason that the United States wholly refused to pay the said checks or drafts or either of them. Your petitioner further states that on the —— day of July, A. D. 1861, the United States, by an official order of the Secretary of War, prohibited the payment of any check or draft issued by any officer or agent of the United States to your petitioner, or upon which the name of your petitioner appeared either as indorser or otherwise.

Your petitioner hereto attaches a copy of the said checks or drafts so as aforesaid issued to your petitioner, or held by your petitioner, by indorsement to your petitioner for a valuable consideration, together with a statement of the amount claimed by your petitioner on account of the said checks or drafts; and your petitioner marks the same Exhibit B, and prays that the same be taken as a part of this petition.

6 Fifth. That on the 1st day of September, A. D. 1861, the United States became and was indebted to your petitioner in a certain other sum of money, to wit, in the sum of eight thousand

nine hundred and fifteen dollars ($8,915.00). And your petitioner states that such indebtedness last above mentioned accrued to your petitioner against the United States as follows: That on the 10th day of November, 1860, your petitioner entered into a contract with the United States through Brevet Lieutenant Colonel John B. Grayson, a commissary of subsistence in the United States Army, in and by which said contract your petitioner agreed to sell and deliver to the United States two hundred and sixty-three thousand pounds of good and wholesome flour upon the terms and at the price specified in the contract hereto attached and marked Exhibit C, which your petitioner prays may be taken as a part of this petition. Your petitioner further states that he was prepared to fulfill all the requirements of the said contract on his part; and that he did in fulfillment thereof cause to be brought to El Paso, in the State of Texas, by the 1st day of April, 1861, the quantity of flour specified in the said contract, to wit, two hundred and sixty-three thousand pounds, and that he had the same at all times in good order and condition to deliver to the United States in fulfillment of the obligations of your petitioner under the said contract, but your petitioner states that the United States did not nor would receive the said flour, although often requested by your petitioner so to do. And your petitioner further states that of the said quantity of flour specified in the said contract the United States, through its authorized officers and agents, received from your petitioner one hundred and ten thousand pounds, for which your petitioner was paid according to the terms of the said contract at the rate of fifteen cents per pound. Your petitioner further states that he retained the remainder of the said flour in his possession until some time in
7 the month of August or September, A. D. 1861, and that he was during all that time ready and willing to deliver it to the United States upon and in satisfaction of the said contract; and your petitioner further states that the United States having refused to receive from your petitioner under the said contract one hundred and fifty-three thousand pounds of flour specified in the said contract, your petitioner, in order to avoid a total loss of the said flour, became and was obliged to sell the said flour to private parties. And your petitioner further avers that, in consequence of the refusal of the United States to receive the said flour under the said contract, your petitioner sold the same to private parties at nine and one-half cents per pound; and your petitioner, in consequence of the refusal of the United States to receive and pay your petitioner for the said one hundred and fifty-three thousand pounds of flour according to the terms of the said contract, sustained a loss thereon of five and one-half cents per pound; and your petitioner avers that the loss to your petitioner by the refusal of the United States to receive the said flour was eight thousand four hundred and fifteen dollars; and in addition to the said sum your petitioner claims from the United States, by reason of the violation of the said contract by the United States, the further sum of five hundred dollars, being the expense incurred by your petitioner in storing the said flour and in watching and airing the same subsequent to the time when the United States, by

the terms of the said contract, were bound to receive and pay for the said flour. And your petitioner avers that the several items of claim which your petitioner makes on account of the breach of the said contract by the United States are attached to and form part of Exhibit C, to which your petitioner prays leave to refer.

4th. Your petitioner further states that he did some acts during the late rebellion which might be construed as rendering aid,
8 assistance, and comfort to the said rebellion; and that on the 23d day of November, A. D. 1865, he received from the President of the United States a full and complete pardon for all offenses committed by your petitioner in aid of the said rebellion; and as an incident of the said pardon your petitioner was restored to all rights of property as well as the right to institute suit in this court for the debts due from the United States to your petitioner.

Your petitioner therefore, by reason of the premises, prays judgment against the United States for the said sum of fifty thousand three hundred and ninety-one dollars and fifty-two cents ($50,391.52.)

JOSEPH CASEY,
JOHN J. WEED,
Attorneys for the Claimant.

Post-office address of claimant, El Paso, Texas.
Post-office address of Henry B. Hart, New York city.
Post-office address of claimant's attorneys, Washington, D. C.

DISTRICT OF COLUMBIA, }
City and County of Washington, } *ss:*

Redick McKee, attorney-in-fact for Henry B. Hart, being duly sworn, on his oath states that he is the agent of the claimant named in the foregoing petition, and that this suit is prosecuted for the sole use and benefit of Henry B. Hart; that no assignment or transfer of the said claim has been made, except as stated in said petition; that the claimant named in the said petition is entitled to recover from the United States the amount stated in the said petition, after allowing all just credits and offsets, and that affiant believes the facts stated in his said petition are true.

REDICK McKEE.

9 Sworn to and subscribed before me this 9th day of January, A. D. 1874.

[L. S.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

EXHIBIT A.

No. 12.

The United States to S. Hart, Dr.

Date of purchase.		
1861.		
March 31.	For 935 fanega of corn at $6.50 per fanega --	$6,077 50
	For 3,278 corn-sacks at 20 cts. each ---- ----	655 60
		$6,733 10

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending 31st of March, 1861.

EDWARD TREACY,
2d Lt. R. M. R., A. A. Quartermaster.

Fort Craig, N. M., June 19, 1861.

No. 12.

The United States to S. Hart, Dr.

Date of purchase.		
1861.		
April 22.	For 689½ fanega of corn at $6.50 per fanega	$4,481 75
	1,130 corn-sacks at 25 cents each	226 00
		$4,707 75

10 I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30th of June, 1861.

EDWARD TREACY,
2d Lt. R. M. R., A. A. Quartermaster.

Fort Craig, N. M., June 19, 1861.

Extract.

List of outstanding debts due and remaining unpaid by the Quarmaster's Department for purchases made and services rendered at Fort Craig, N. M.

Regular Supplies.

Due S. Hart for 1,624½ fanega of corn, at 6.50 per fanega	$10,559 25
Due S. Hart for 4,408 corn sacks, at 20 cents each	881 60
	$11,440 85

I certify on honor that the above is a correct list of all the outstanding debts due by the Quartermaster's Department, incurred by me, or which I have any knowledge of having been incurred by my predecessor.

EDWARD TREACY,
2d Lt., R. M. R., A. A. Quartermaster

A. A. Quartermaster's Office, Fort Craig, N. M., May 31, 1861.

11 No. 22.

The United States to Simeon Hart, Dr.

1860.		
Nov. 25.	For foraging and taking care of 25 public animals of the Quartermaster's Department from the 5th of November, 1860, to the 25th of November, 1860, at 75 cents per head per day, being 20 days	$375 00

Jan'y 3.	For foraging and taking care of 18 public animals of the Quartermaster's Department for 12 days, commencing 22d of December, 1860, and ending 3d of January, 1861, at 75 cents per head per day	162 00
Feb'y 22.	For foraging and taking care of 21 public animals of the Quartermaster's Department for 10 days commencing on the 13th and ending on 22d of February, 1861, at 75 cents per head per day	157 50
		$694 50

I certify that the above account is correct and just, and that the services were rendered as stated, and that they were necessary for the public service, and that the account has not been paid by me in consequence of the want of funds.

THOMAS K. JACKSON,
1st Lt. 8th Infantry, A. A. Q. M.

12 EXHIBIT B.

No. 7.

EL PASO, TEXAS, *October* 24, 1860.

Assistant Treasurer of the United States, New Orleans:

Pay Lt. T. K. Jackson, or order, one thousand dollars, $1,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsements: Pay order of S. Hart. T. K. Jackson, 1st lt. 8th infantry, A. A. C. S. Pay order of Jose Cordero. S. Hart.

No. 8.

EL PASO, TEXAS, *October* 24, 1860.

Assistant Treasurer of the United States, New Orleans:

Pay to Lt. T. K. Jackson, or order, one thousand dollars, $1,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsements: Pay order of S. Hart. T. K. Jackson, 1st lt. 8th infantry, A. A. C. S. Pay order Jose Cordero. S. Hart.

No. 9.

EL PASO, TEXAS, *October* 24, 1860.

Assistant Treasurer of the United States, New Orleans:

Pay to Lt. T. K. Jackson, or order, one thousand dollars, $1,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

13 Indorsements: Pay order of S. Hart. T. K. Jackson, 1st lt. 8th infantry, A. A. C. S.

No. 10.

EL PASO, TEXAS, *October* 24, 1860.

Assistant Treasurer of the United States, New Orleans:

Pay to Lt. T. K. Jackson, or order, one thousand dollars, $1,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsements: Pay order of S. Hart. T. K. Jackson, 1st lt. — infantry, A. A. C. S. Pay order of Jose Codero. S. Hart.

No. 53.

EL PASO, TEXAS, *November* 8, 1860.

Assistant Treasurer of the United States, New Orleans:

Pay to S. Hart, or order, eight hundred dollars, $800.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsement: Pay order Valaco & Ochoa. S. Hart.

No. 690.

FORT BLISS, TEXAS, *December* 23, 1860.

Assistant Treasurer of the United States, New York:

Pay to S. Hart, or order, one thousand dollars, $1,000.00.

THOMAS G. RHETT,
Paymaster U. S. A.

Indorsement: Pay order of Jose Lambrouel. S. Hart.

14 No. 691.

FORT BLISS, TEXAS, *December* 23, 1860.

Assistant Treasurer of the United States, New York:

Pay to S. Hart, or order, one thousand dollars, $1,000.00.

THOMAS G. RHETT,
Paymaster U. S. A.

Indorsement: Pay order of Jose Lambrouel. S. Hart.

No. 1720.

SANTE FE, N. M., *May* 4, 1861.

Assistant Treasurer of the United States:

Pay to Lt. W. B. Lane, U. S. A., or order, one thousand dollars, $1,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsement: Pay order of Simeon Hart. Lt. W. B. Lane, U. S. A.

No. 1730.

SANTE FE, N. M., *May* 4, 1861.

Assistant Treasurer of the United States, New York:

Pay to Lt. W. B. Lane, or order, five hundred dollars, $500.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsement: Pay order of Simeon Hart. Lt. W. B. Lane, U. S. A.

15 No. 1444.

SANTA FE, N. M., *May* 9, 1861.

Assistant Treasurer of the United States, New York:

Pay to George T. Beall, or order, one hundred and ninety-five dollars, $195.00.

F. L. DONALDSON,
A. Q. M.

Indorsement: Pay to order S. Hart. Geo. T. Beall.

No. 1454.

SANTA FE, N. M., *June* 9, 1861.

Assistant Treasurer of the United States, New York:

Pay to Wm. W. Loring, or order, one hundred dollars, $100.00.

F. L. DONALDSON,
A. Q. M.

Indorsement: Pay to order of Simeon Hart. W. W. Loring.

No. 1683.

SANTA FE, *April* 21, 1861.

Assistant Treasurer of the United States, New York:

Pay to S. Hart, or order, two thousand dollars, $2,000.00.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Indorsement: Pay order of John Marshall. S. Hart.

16 No. 483.

FORT BLISS, *May* 7, 1860.

Assistant Treasurer of the United States, New York:

Pay to S. Hart, or order, one thousand dollars, $1,000.00.

THOMAS G. RHETT,
Paymaster U. S. A.

Indorsement: Pay order Jose Cordero. S. Hart.

No. 1701.

SANTA FE, *April* 28, 1861.

Assistant Treasurer of the United States, New York:

Pay to S. Hart, or order, two hundred and thirty-six dollars, $236.00.

JOHN B. GRAYSON,
Brt. Lt. Col. and C. S.

Indorsement: Pay order of W. B. Scurry. S. Hart.

To amount paid June, 1861, as commercial damages, interest, protest, &c., on Major Rhett's check, No. 483	$118 00
For amount paid May 3, 1862, as commercial damages, protest, interest, &c., on Col. Grayson's check, No. 1701, W. B. Scurry	32 00
For interest upon the checks or drafts, above described and set forth, from July, 1861, to date, twelve and one-half years, at six per cent per annum	8,873 25

17 *Recapitulation.*

Whole amount checks issued to or held by petitioner by indorsement	$11,841 00
Cost of protest and damages on Major Rhett's check, No. 483	118 00
Cost of protest and damages on Col. Grayson's check, No. 1701	32 00
Interest on checks or drafts issued to or indorsed to petitioner from July, 1861, to date, twelve and one-half years, at six per cent	8,873 25
	$20,854 25

EXHIBIT C.

EL PASO, TEXAS, *9th November*, 1860.

COLONEL: After declining yesterday to undertake to furnish your department any more flour beyond the amounts called for by our special contract of the 3d instant, and being since informed by you and Col. Fauntleroy, commanding department, that you have not time to order a supply from New Orleans to fill up deficiencies of contractors in New Mexico, to oblige you and Col. Fauntleroy I have determined to attempt to fill your further order for 263,000 bbls. from my Chihuahua mills, although I shall have serious difficulties in procuring the requisite amount of wheat in Chihuahua.

I hereby agree to furnish from my Chihuahua mills the above amount of 263,000 pounds of good and wholesome flour, on terms similar to those of our special contract with Lt. T. K. Jackson, A. A. C. S., of 3d instant. If you receive it here, at Fort Bliss, at 15 cents per pound; if at Fort Fillmore, 16 cents per pound; if at
18 Fort Craig, 18½ cents per pound; if at Fort Stanton, 18½ cents per pound; if at Albuquerque, 20½ cents per pound.

You are to give me timely notice as to the posts you will require it to be delivered at, and to order its delivery before the first of July next, as I will have all this flour here from my Chihuahua mills for delivery on your orders by the first of next April. I have established a flour depot at Doña Aña, in New Mexico, sixty miles north of here, to facilitate forwarding flour to posts in New Mexico as you may order it.

Very respectfully, your ob't servant,

S. HART.

Col. John B. Grayson, C. S., U. S. Army, Fort Bliss, Texas.

Approved and recommended by me, and accepted by order of Col. T. S. Fauntleroy, commanding department of New Mexico.

JOHN B. GRAYSON,
Bvt. Lt. Col. and C. S.

Fort Bliss, Texas, Nov. 10, 1860.

The claim on account of this contract and for its violation by the United States is as follows:

For loss on 153,000 pounds of flour which the United States refused to receive under and upon said contract, the same being sold at 9½ cents per pound, while the contract price was 15 cents per pound, the loss being 5½ cents per pound	$8,415 00
For storage of said flour from the 1st of April, 1861, to 1st of September, 1861, five months, at sixty dollars per month	300 00
For expense of watching and airing said flour during said period to preserve the same	200 00
	$8,915 00

19 EXHIBIT D.

Whereas the Government of the United States is indebted to me for supplies furnished to the Army of the United States in Texas prior to and in the year 1861, and there is now due to me thereon from the commissary general of subsistence the sum of $35,191, and from the Quartermaster General's Office the further sum of $12,175, and also a certain sum for certain checks of the United States lost or mislaid; and

Whereas I was provided by my brother, Henry B. Hart, with money, securities, and credit, by means whereof I procured the supplies so as aforesaid furnished; and

Whereas I did, at the time of receiving such moneys, securities, and credit, promise and agree to and with the said Henry B. Hart that I would assign to him any and all claims which might arise in my favor against the United States for supplies furnished by means thereof to the United States; and

Whereas I did heretofore, and on or about the 5th day of June, 1866, in fulfillment of said agreement, execute and deliver to the

said Henry B. Hart a formal assignment of said claims, which assignment has been lost or mislaid:

Now, therefore, in order more fully to effectuate the said agreement and to enable the said Henry B. Hart to collect the said claims, and for the considerations aforesaid and of one dollar to me by the said Henry B. Hart duly paid, I do hereby sell and assign to the said Henry B. Hart all of the above claims, and do hereby authorize and request the proper accounting officers of the United States to pay to the said Henry B. Hart all such sums as may be due to me on account thereof.

September 23, 1867.

[L. S.] SIMEON HART.

STATE OF NEW YORK, }
City and County of New York, } *ss:*

On this 23d day of September, 1867, before me personally came Simeon Hart, known to me to be the individual described in and who executed the above instrument, and acknowledged that he executed the same.

[L. S.] ELIJAH H. RIKER,
Notary Public, Residing in the City of New York.

20 II.—*Counter-claim. Filed July* 14, 1874.

And now come the defendants, by their Attorney General, by leave of the court, and allege that the said claimant, Simeon Hart, was at the commencement of this suit, and still is, indebted to the defendants in the sum of $9,000, lawful money of the United States. For that whereas one John B. Grayson was duly appointed and commissioned according to law a commissary of subsistence in the United States Army, on or before the 24th day of June, 1860, and, before entering upon the duties of said office, he was by law required to give a bond in the sum of at least $9,000, with good and sufficient sureties, for the faithful performance of his duties as such commissary for the period of four years from the date aforesaid, and that, in pursuance of said law, the said John B. Grayson, as principal, and said Simeon Hart and one James L. Johnson, as sureties, did, on or about the date aforesaid, duly and legally execute, under their proper hands and seals, and deliver to the United States, the said defendants, their joint and several bond or writing obligatory, by which they jointly and severally bound themselves to the said defendants in the sum of $9,000, lawful money of the United States, the condition of which obligation was such that if the said John B. Grayson should in all things well and truly receive funds and property of the United States, as such commissary, and disburse the same according to law, regulations, and proper orders of his military superiors for the period of four years from the day and date above mentioned, then said obligation was to be void, otherwise to remain in full force and virtue; which bond, after said delivery, was duly approved by the proper officer of the United States, the then Secretary of War, on the 26th day of July, 1860, and filed;

and whereas, after the execution, delivery, approval, and filing of the said bond as aforesaid, and during the said four years above mentioned, the said John B. Grayson did receive, as such commissary of subsistence, of the funds and property of the United States, a large amount, to wit, of the amount and value of $500,000, and whereas the said John B. Grayson has utterly neglected and refused to disburse the same according to law, regulations, and the orders of his military superiors during the period aforesaid, and still neglects and refuses so to do, and still has in possession of said funds and property the sum of $80,000, which he declines and refuses to pay over or account for, although often requested so to do, the said defendants have sustained damage in said sum of $80,000, and said John B. Grayson, as principal, and said Johnson and Hart, as sureties, have become and are jointly and severally liable and indebted to said defendants on said bond in said sum of $9,000, of all which said sureties had notice, and for which sum said defendants demand judgment against said Hart, and will set off the same against any claim or recovery of said Simeon Hart in this suit.

JOHN GOFORTH,
Assistant Attorney General.

21 III.—*Plea of Limitation. Filed August* 24, 1874.

And now come the defendants, by their Attorney General, and say that the claimant herein should not further have or maintain his suit against the defendants, for the reason that the petition of the claimant was not filed in this Court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment &c.

JOHN GOFORTH,
Assistant Attorney General.

22 IV.—*Suggestion of Death of Simeon Hart, and Suit Revived in the Name of A. B Hyde, Administrator, Dec.* 23, 1874.

At a Court of Claims held in the city of Washington, on the 23d day of December, A. D. 1874, Mr. Weed filed motion suggesting the death of Simeon Hart and asking that the suit be revived in the name of A. B. Hyde, administrator of the said Simeon Hart, deceased.

Allowed.

V.—*Demurrer to Plea of Limitation. Filed January* 3, 1877.

The claimant, by John J. Weed, his attorney, comes and says that the said plea of the said defendants by it secondly above
23 pleaded (being the plea of the statute of limitations) is not sufficient in law for the said claimant to be barred of his said action against the said defendants, and this the said claimant prays may be inquired of by the Court.

JOHN J. WEED,
Attorney for Claimant.

VI.—*Demurrer to Plea of Limitation Sustained. May* 7, 1877.

At a Court of Claims held in the city of Washington of the 7th day of May, A. D. 1877, the Chief Justice read the opinion of the Court, and it was ordered that the demurrer of the claimant to the plea of limitation filed by the defendants be sustained. Judge Loring read a dissenting opinion.

24 VII.—*Motion for Leave to Amend Petition Filed and Allowed May* 9, 1877.

The claimant, by John J. Weed, his attorney, moves the Court for leave to file herein an amended petition, which is herewith submitted.

JOHN J. WEED,
Attorney for Claimant.

At Chambers, May 9, 1877.

Allowed.
C. C. NOTT, *J.*

VIII.—*Amended Petition. Filed May* 9, 1877.

The claimant, by leave of the Court for that purpose first had and obtained, comes and files herein his amended petition in the words and figures following, to wit:

1st. That the claims of the petitioner for commissary and quartermaster's stores, as they then existed between the petitioner and the United States, were presented to the War Department of the United States for settlement and payment in the month of June, 1861, and they there remained without any action thereon by that department from that time until subsequent to the suppression of the late rebellion.

2d. That the claim and cause of action stated and set forth as the fourth item of claim and demand in your petitioner's petition herein was presented to the War Department of the United States for settlement and payment on the 2d day of April, A. D. 1866.

3d. That on the 30th day of November, A. D. 1867, all the claims and demands of your petitioner against the United States, as stated and set forth in your petitioner's original petition herein,
25 were embraced in a single claim and demand under several items of claim, and again brought to the attention of the said War Department and payment thereof demanded from the said War Department and from the United States.

4th. That on the 14th day of October, A. D. 1873, as stated in the original petition herein, the honorable the Secretary of War transmitted the said several claims so as aforesaid made upon and against the said War Department to this Court, and the said Secretary of War, in transmitting the said several claims, addressed to this Court a letter in the words following, viz:

"WAR DEPARTMENT,
"WASHINGTON, *October 13th*, 1873.

"To the honorable judges of the Court of Claims:

"The undersigned, Secretary for the Department of War of the United States, hereby represents that a claim has been made upon said Department by Henry B. Hart, assignee of Simeon Hart, for payment of supplies furnished the Quartermaster and Commissary Departments under contracts. This claim involves disputed facts and controverted questions of law, and the amount in controversy exceeds three thousand dollars, and it is, therefore, deemed proper to transmit the claim, with all the vouchers, papers, proofs, and documents pertaining thereto on file in this Department, to the Court of Claims, to be there proceeded in according to law.

"WM. W. BELKNAP,
"*Secretary of War.*"

5th. That from the commencement to the close of the late rebellion the said claimant was a resident at El Paso, in the State of Texas.

Wherefore your petitioner prays judgment as in and by his original petition he has already prayed.

JOHN J. WEED,
Attorney for Claimant.

DISTRICT OF COLUMBIA, }
City and County of Washington, } ss:

Redick McKee, attorney-in-fact for the claimant named in the foregoing amended petition, being duly sworn, on his oath states that the matters and things stated and set forth in the foregoing amended petition are true in substance and in fact, and further saith not.

REDICK McKEE.

Subscribed and sworn before me this 5th day of May, 1877.
[SEAL.] THOMAS C. CONNOLLY,
Notary Public.

26 IX.—*Traverse to Amended Petition. Filed May* 12, 1877.

And now comes the Attorney General, on behalf of the United States, and makes answer to the amended petition of the claimant herein, and, not confessing the same or any part thereof, denies each and every the allegations therein contained, and calls for strict proof of the same, and denies that the claimant is entitled to judgment by reason of anything in said amended petition contained, and prays that the said petition as amended be dismissed.

THOMAS SIMONS,
Assistant Attorney General.

X.—*Plea of Limitation to Amended Petition. Filed May* 12, 1877.

Now come the defendants, by their Attorney General, and say that

the claimant herein should not farther have or maintain his
27 suit against the defendants, for the reason that the amended petition of the claimant was not filed in this Court nor transmitted to it within six years after the claim therein set forth first accrued.

Wherefore the defendants ask judgment, &c.

THOMAS SIMONS,
Ass't Attorney General.

XI.—*Replication to Defendant's Plea of Set-off. Filed October* 14, 1878.

And the said plaintiff, by John J. Weed, his attorney, for replication to the third plea of the said defendant (the plea of set-off), comes and says that the said plaintiff ought not to be precluded from having or maintaining his aforesaid action against the said defendant by reason of the matters and things stated and set forth in the said plea of the said defendant, thirdly above pleaded, because he says that heretofore, to wit, on the 31st day of May, A. D. 1861, the defendant was indebted to the said Simeon Hart in the sum of thirty thousand seven hundred and seventy-eight dollars and eighteen cents ($30,778.18) for flour, before that time furnished to the defendant at the United States military posts of Albuquerque and Fort Stanton, in the Territory of New Mexico; for which said flour so furnished by the said Simeon Hart to the defendant the defendant,
by Lieut. Col. John B. Grayson, its authorized officer and agent,
28 issued his certain certificate or voucher in the form prescribed by law, and delivered the same to the said Simeon Hart, who then delivered the same for collection to McKnight & Richardson; and the said plaintiff avers that afterwards, to wit, on the 31st day of January, 1873, the defendant paid to the said McKnight & Richardson, for and on account of the said certificate or voucher so as aforesaid issued by the said defendant to the said Simeon Hart, the sum of twenty-one thousand six hundred and seventy-five dollars and sixty-eight cents ($21,675.68); and the said defendant, on the day and year last aforesaid, at the city of Washington, District of Columbia, retained and converted to its own use, out of the amount due and payable on account of the said certificate or voucher so as aforesaid issued by the defendat to the said Simeon Hart, the sum of nine thousand dollars ($9,000.00) on account and in payment of a supposed debt claimed to be due to the defendant by the said Simeon Hart as security on an official bond executed to the defendant by Lieut. Col. John B. Grayson as commissary of subsistence; and the plaintiff avers that the defendant still retains to its own use the said sum of nine thousand dollars; and the plaintiff avers that by reason thereof the supposed indebtedness of the said Simeon Hart to the defendant, for and on account of the matters and things stated in the defendant's third plea, has been fully satisfied and discharged, and this the plaintiff is ready to verify; wherefore he prays judgment, &c.

JOHN J. WEED,
Attorney for Plaintiff.

XII.—*Special Demurrer Filed November* 17, 1879, *by Leave of Court, and Order Overruling Same December* 8, 1879.

The Attorney General, on behalf of the United States, comes and says that the petition and the amended petition in this case, and the matters therein contained, in manner and form as the same are stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof, and the defendants are not bound by law to answer the same; wherefore he prays judgment that the said plaintiff may be barred from having or maintaining his aforesaid action thereof.

And the Attorney General, according to article III, section 2, of the rules of the Court, states and shows to the Court the following causes of demurrer to the said petition and amended petition; that is to say, that neither the original petition nor the amended petition has been verified by the affidavit of the claimant, his agent or attorney, according to the form of the statute in such case made and provided.

THOMAS SIMONS,
Assistant Attorney General.

29 And now, to wit, December 8, 1879, at a Court of Claims held in the city of Washington, it is ordered that the demurrer be overruled.

XIII.—*Suggestion of Death of Hart & Motion to Substitute Thos. Wilson as Administrator.*

At a Court of Claims held in the city of Washington on the 8th day of April, 1880, Mr. Wilson filed letters of administration to himself on the estate of Simeon Hart and a motion suggesting the death of Simeon Hart, and asking that the suit be revived in the name of Thomas Wilson, as his administrator. Mr. Wilson and Mr. Weed were heard for the motion and Mr. Blair for the defendants in opposition, and it was submitted.

30 XIV.—*James P. Hague Substituted as Administrator. Thomas Wilson's Motion Withdrawn. Leave to Amend Petition, June* 3, 1880.

At a Court of Claims held in the city of Washington on the third day of June, A. D. 1880, ordered that James P. Hague, administrator of the estate of Simeon Hart, successor of A. B. Hyde, administrator, be substituted in place of said Hyde as party claimant herein, and that Thomas Wilson, Esq., have leave to withdraw the motion that he be substituted as such party claimant.

Ordered, also, that the claimant have leave to file an amended petition.

31 XV.—*Amended Petition. Filed June* 3, 1880.

JAMES P. HAGUE, Adm'r of the Estate of Simeon Hart, Dec'd,
vs.
THE UNITED STATES. } No. 7908.

The claimant, by leave of the Court for that purpose had and obtained, files herein his amended petition as follows:

1st. That he adopts and states as a part of this his amended petition each and all of the allegations of the original and amended petitions filed herein on the 9th day of January, A. D. 1874, and the 7th day of May, A. D. 1877.

2nd. That as to the pretended assignment of the claim stated and set forth in the original petition herein, made by said Simeon, deceased, to Henry P. Hart on the 23d day of September, A. D. 1867, the claimant prays the Court to treat the same as void and of no binding force or validity in law, and that judgment may be rendered herein in favor of your petitioner as the legally appointed
32 and qualified administrator of the said Simeon Hart, dedeceased.

JOHN J. WEED,
Att'y for Claimant.

DISTRICT OF COLUMBIA, } *ss:*
City and County of Washington, }

John J. Weed, attorney-in-fact for the above-named claimant, under a power of attorney filed herewith and dated May 24, 1880, being duly sworn, on his oath says that he has read the original and amended petitions filed herein, as stated in the foregoing amended petition, and knows the contents thereof, and that he believes the matters and things stated and set forth in the said original and amended petitions are true, and that no assignment or transfer of the said claim or of any part thereof or interest therein has been made, except in the manner and form stated in the said original petition, and that the claimant, as administrator of the estate of the said Simeon Hart, deceased, is entitled to the amount in
33 the said petition claimed from the United States after deducting all just credits and offsets.

JOHN J. WEED,
Attorney-in-Fact.

Subscribed and sworn to before me, this second day of June, A. D. 1880.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

XVI.—*Motion to Dismiss Without Prejudice, Items Four and Five of Claimant's Original Petition, Filed June* 7, 1880, *and Order Thereon.*

And now comes the claimant in the above-entitled cause, and moves the Court for leave to withdraw from the consideration of the

Court, and dismiss without prejudice, so much of the claimant's demand or cause of action as is stated and set forth in the fourth
34 and fifth items of claim in the original petition filed herein on the 9th day of January, 1874.

JOHN J. WEED,
Attorney for Claimant.

Order endorsed thereon: Allowed as of June 3d, 1880, before submission of the case.

By the Court:

WM. A. RICHARDSON,
Judge at Chambers.

XVII.—*Findings of Fact and Conclusion of Law. Filed June* 7, 1880.

(For Opinion of the Court see 15, C. C. R., p. 424.)

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

On the 3d March, 1861, Thomas K. Jackson was and for some time had been a first lieutenant of infantry in the army of the United States, and acting assistant commissary of subsistence and acting quartermaster at Fort Bliss, in Texas. On the first day of April, 1861, he resigned from the army of the United States, and his resignation was accepted, and he entered the rebel service.

II.

On the same day John B. Grayson was and for some time before had been a major and commissary of subsistence and brevet lieutenant colonel in the army of the United States, on duty as chief commissary of subsistence of the department of New Mexico. He was relieved April 19, 1861. He then proceeded to San Antonio, Texas, where Col. Earl Van Dorn on the 21st of April, 1861, took command of the insurgent forces gathered there. From that place he resigned from the army of the United States. He entered the rebel service.

III.

On the same day Edward Treacy was a second lieutenant in the regiment of mounted riflemen in the army of the United States, and then was and for two months previous had been on duty as acting assistant quartermaster and acting commissary of subsistence at the post of Fort Craig, in New Mexico, and continued at such post on such duty until May 1, 1861. He remained loyal. His services in the army were terminated by his death, February 15, 1864.

IV.

On the same day Simeon Hart, the claimant's intestate, was residing in El Paso, Texas, and was in active sympathy with those who

were inciting to rebellion. In April, 1861, he joined the insurgents and then and afterwards furnished them supplies, money, and means of transportation to carry on their invasion and campaign into New Mexico.

V.

Among the papers transmitted to the court by the Secretary of War is the following voucher, which is signed by the said Thomas K. Jackson:

35 The United States to Simeon Hart, Dr.

Date of purchase.		Dollars.	Cents.
March 3, 1861.	For 30,000 lbs. flour, delivered at Fort Bliss, Texas, @ 9½c.	2,850	00
	Total, two thousand eight hundred and fifty dollars	2,850	00

I certify that the above account is correct and just, and that the articles have been accounted for on my provision return for the month ending on the 31st of March, 1861, and that the account has not been paid by me, in consequence of the want of funds.

THOMAS K. JACKSON,
1st Lt. of Inf'y, A. A. C. S.

Among the papers transmitted to the Court from the Treasury Department, in answer to a rule made at the claimant's request, are the following copies of papers on file or of record in that Department:

(No. 5042.) TREASURY DEPARTMENT,
THIRD AUDITOR'S OFFICE, *May* 24, 1861.

I certify that there is due from the United States to Simeon Hart, contractor, the sum of two thousand eight hundred and fifty dollars, on account of "subsistence," by general account of money advanced for 30,000 lbs. of flour, @ 9½ cents per lb., delivered to Lieut. Thomas K. Jackson, 8th Infantry, acting assistant commissary at Fort Bliss, Texas, in the month of March, 1861, as per voucher herewith, $2,850.00 (remit to Simeon Hart, contractor, El Paso, Texas, by draft on assistant treasurer at New Orleans, La., on account of subsistence, $2,850.00), — appears from the statements and vouchers herewith transmitted for the decision of the second comptroller of the Treasury thereon.

R. J. ATKINSON, *Auditor.*

To James M. Cutts, Esq., Second Comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 25th day of May, 1861.

J. MADISON CUTTS,
Second Comptroller.

May 28, 1861.—Requisition No. 4357. Simeon Hart, contractor at El Paso, Texas. Due on sett., per certificate of the 2d comptroller, No. 5042.

Subsistence $2,850 00

No warrant or draft was ever issued pursuant to said requisition. The records of the Treasury Department do not show that it has been paid.

A further return of the Secretary of the Treasury, made May 10, 1879, in compliance with a rule of this Court, transmits to the Court the following copies:

Abstract of Purchases Made on Account of Subsistence of the Army, by 1st Lieut. Thos. K. Jackson, 8th Inf'y, A. A. C. S., at Fort Bliss, Texas, in the Quarter Ending on the 31st of March, 1861.

Date.	No. of voucher.	From whom purchased.	Beeves.	Flour.	Vinegar.	Corn.	Amount.
1861.			*No. of.*	*Pounds.*	*Galls.*	*Pounds.*	$ c.
Jan'y 31	1	S. Hart		30,000			5,190 00
March 3	2	Vicente Sapatos				10,000	500 00
" 18	3	Hugh Stephenson	11				275 00
" 26	4	W. H. Moore			60		120 00
" 27	5	S. Hart		110,900			14,512 00
		Total	11	140,900	60	10,000	$20,597 00

I certify that the purchases were made agreeably to the above abstract, and that the sums were actually paid as charged, and also that I was wholly uninterested in the purchases, and that the articles were purchased at the lowest market price.

THOS. K. JACKSON,
1st Lieut. 8th Inf'y, A. A. C. S.

36 FORM No. 12. (Voucher to Abstract A.)

The United States to Simeon Hart, Dr.

Place and date of purchase.		Dollars.	Cts.
1861.			
Jan'y 29	For 24,000 lbs. flour, delivered at Fort Craig, N. M., @ 18½c	4,440	00
" 31	40,500 lbs. flour, delivered at Albuquerque, N. M., @ 13c.	5,278	00
Feb'y 18	11,300 " flour, delivered at Albuquerque, N. M., @ 13c	1,469	00
" 20	3,000 " flour, delivered at Fort Bliss, Texas, @ 9½c	285	00
March 3	32,000 " flour, deliveced at Fort Bliss, Texas, @ 9½c	3,040	00
Total	110,900 lbs. flour	14,512	00

I certify that the above account is correct and just, and that the articles have been accounted for on my provision returns for February and March, 1861.

THOS. K. JACKSON,
1st Lt. 8th Inf'y, A. A. C. S.

Received at Fort Bliss, Texas, the 27- of March, 1861, of 1st Lt. T. K. Jackson, 8th Inf't'y, A. A. C. S. U. S. Army, the sum of fourteen thousand five hundred & twelve dollars and — cents in full of the above account.

(Signed in duplicate.) S. HART.

(Indorsed:) Form No. 12. Voucher No. 5, abstract of purchases 1st qr., 1861. Dollars, 14,512.00. Paid 27th March, 1861.

Except these facts there is nothing in the record to show whether any flour was or was not delivered to the defendants by the said Hart at Fort Bliss on or about the 3rd March, 1861, or what was the worth of the said flour if any such was delivered.

As a resulting fact from the foregoing facts the Court finds that there was no flour delivered to the defendants by the said Hart at that time at Fort Bliss, except the said 32,000 pounds, and that he was paid for the same in full.

VI.

Among the papers so transmitted by the Secretary of War is the following voucher signed by the said Thomas K. Jackson:

The United States to Simeon Hart, Dr.

Date of purchase.		Dollars.	Cents.
Nov. 25, 1860.	For foraging & taking care of 25 public animals of the Q. M. D., from the 5th to the 25th Nov., 1860, 20 days, @ 75c. pr. head pr. day	375	00
Jan'y 3, 1861.	For foraging & taking care of 18 pub. animals of the Q. M. D., for 12 days, commencing the 22d of Dec., 1860, & ending the 3 of Jan'y, 1861, @ 75c. pr. head pr. day	162	00
Feb. 22, 1861.	For foraging & taking care of 21 pub. animals of the Q. M. D., for 10 days, commencing the 13th & ending the 22d Feb., 1861, @ 75c. pr. head pr. day	157	50
		684	50

I certify that the above account is correct and just; that the services were rendered as stated; and that they were necessary for the public service; & that the account has not been paid by me in consequence of the want of funds.

THOS. K. JACKSON,
1st Lt. of Inf'y, Quartermaster.

Received at ——, the — of ——, 185–, of —— ——, quartermaster United States Army, the sum of six hundred and ninety-four dollars and fifty cents, in full of the above account.

S. HART.

The said Jackson made a report, which is on file in the War Department, of the persons and articles hired by him from November, 1860, to March, 1861, inclusive. No mention of the services set forth in the above voucher is made in said report.

37 Except this voucher there is nothing in the record to show that the services set forth in the voucher were rendered to the defendants by said Hart, or that they were worth the sums therein named.

As a resulting fact from the foregoing the court finds that the supplies and labor referred to in the voucher set forth in this finding were not furnished to the defendants by the said Hart.

VII.

Among the vouchers so transmitted by the Secretary of War are two other vouchers certified by said Treacy, which are in the words and figures following, viz:

The United States to S. Hart, Dr.

Date of purchase.		Dollars.	Cents.
March 31, 1861.	For 935 fanegas of corn at $6.50 per fanega	6,077	50
" " "	For 3,278 corn sacks, at 20 cents each	655	60
		$6,733	10

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1861.

Fort Craig, N. M., June 19th, 1861.

EDWARD TREACY,
2nd Lieut. R. M. R., A. A. Quartermaster.

EXHIBIT D. A. H.

The United States to S. Hart, Dr.

Date of purchase.		Dollars.	Cents.
April 22nd, 1861.	For 689½ fanegas of corn, at $6.50 pr. fanega	4,481	75
" " "	For 1,130 corn sacks, at 20 cents each	226	00
		$4,707	75

I certify that the above account is correct and just; and that the articles have been accounted for on my property return for the quarter ending on the 30th of June, 1861.

Fort Craig, N. M., June 19th, 1861.

EDWARD TREACY,
2nd Lieut. R. M. R., A. A. Quartermaster.

The said return of the Secretary of the Treasury, made May 10, 1879, heretofore referred to, contains, among other things, the following copies:

FORM No. 25. (Voucher to Abstract D.)

The United States to S. Hart, Dr.

Place and date of purchase.		Dollars.	Cts.
1861.			
March 31--	For 1,396$\frac{3}{5}\frac{1}{6}$ fanegas of corn, at $6.50 per fanega----------	9,077	60
" " --	For 3,278 corn sacks, at 20 cents each--	655	60
		$9,733	20

I certify on honor that the above account is correct and just; that I purchased the articles above enumerated of the said S. Hart at the price therein charged, amounting to nine thousand seven hundred and thirty-three dollars and twenty cents, and that I have not paid the account, the funds on hand being insufficient.

(Signed in duplicate.)

EDWARD TREACY,
2d Lt. R. M. R., A. A. Quartermaster.

(Indorsed:) (Form No. 25.) Voucher No. 12, Abstract D. 1st qr., 1861. S. Hart. Dollars, 9,733.20.

38 The United States to S. Hart, Dr.

Place and date of purchase.		Dollars.	Cts.
1861.			
April 22nd	For 535$\frac{84}{140}$ fanegas of corn, at $6.50 per fanega ----------	3,481	40
"	For 1,130 corn-sacks, at 20 cents each--	226	00
		$3,707	40

I certify on honor that the above account is correct and just; that I purchased the articles above enumerated of the said S. Hart at the price therein charged, amounting to three thousand seven hundred and seven dollars and forty cents, and that I have not paid the account, by reason of instructions contained in a letter from the office of the Com. Gen. of Sub., dated Washington, May 11th, '61, received through the chief of sub. dep. N. Mexico.

(Signed in duplicate.)

EDWARD TREACY,
2d Lt., R. M. R., A. A. Quartermaster.

(Indorsed:) (Form No. 25.) Voucher No. 1, Abstract D. 2d qr., 1861. S. Hart. Dollars 3,707.40.

FORM No. 12. (Voucher to Abstract A.)

The United States to S. Hart, Dr.

Place and date of purchase.		Dollars.	Cts.
1861. March 14th	153 1/3 fanegas of corn, @ $6.50 fanega	1,000	00
		$1,000	00

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 31st of March, 1861.

EDWARD TREACY,
2d Lt. R. M. R., A. A. Quartermaster.

Received at Fort Craig, N. M., the 14th of March, 1861, of Lieut. Edward Tracy, A. A. Quartermaster, U. S. Army, the sum of one thousand dollars and —— cents, in full of the above account.

(Signed in duplicate.) S. HART.

(Indorsed:) Form No. 12. Voucher No. 13, Abstract A. 1st quarter, 1861. S. Hart. Dollars 1,000.00. Paid March 14th, 1861.

Except these papers there is nothing in the record to show whether the property described in said vouchers, or any part of it, was delivered to the defendants by the said Hart, or what was the worth of the said property if any such was delivered.

On the 22d April, 1861, when the lot of corn and corn-sacks described in the second voucher purports to have been delivered, the said Hart was acting with the enemy, and on the 19th of June, 1861, when the said vouchers purport to have been made out and delivered, the said Hart was within the enemy's lines.

39 VIII.

Among the papers so transmitted by the Secretary of War is the following voucher, signed by the said Grayson:

The United States to Simeon Hart, Dr.

June 21st, 1861.	To error in voucher No. 5, 2d qr., 1861, being for 32,000 lbs. flour, at 12 cts. per lb., in lieu of 13 cts. per lb. for 12,100 lbs., as per contract June 28th, 1860	121	00
	And 20½ cts. per lb. for 19,900 lbs., as per contracts of Nov. 3rd, 1860	1,591	50
	And also error in voucher No. 9, 2nd qr., 1861, being for 17,800 lbs. flour, at 12 cts. per lb., in lieu of 20½ cts. per lb., as per contract Nov. 3rd, 1860	1,513	00
	Making total in errors	3,325	50

Error on the first item, 1 ct. per lb.; on second and third item, 8½ cts. per lb.

I certify on honor that the above account is correct and just; that this flour has been faithfully issued; that I have accounted for this flour by the receipts of officers duly qualified to receive the same; that it was purchased at the prices mentioned and contracted for (see contracts of 28th June and 3rd Nov., 1860); and that Judge Hart is entitled to the amount specified on the face of this account, and I have not paid this account, owing to the order of the Secretary of War, through the Commissary General, of 11th May, 1861.

JOHN B. GRAYSON,
Brt. Lieut. Col. & C. of S.

When this alleged voucher purports to have been issued the said Grayson was within the enemies' lines. His accounts for the second quarter of 1861 have never been transmitted to nor filed in the Treasury Department, nor are there any vouchers on file for moneys paid out by him during that quarter.

The vouchers which this voucher assumes to correct have not been offered in evidence, nor is it proved that at the time Hart received the money on them he protested or objected to the amounts. Nor is there any evidence of the amounts paid to Hart on said vouchers, except that contained in the one now before the Court. The certificate is on a different kind of paper, and is simply pasted to the voucher; no proof is offered to show when this was done, and there are no marks on the voucher itself to show that it ever came under Grayson's observation.

The Court finds, as a resulting fact, that the defendants were not indebted to said Simeon Hart in his lifetime, and are not indebted to the claimant, his administrator, in any sum in consequence of any matters contained in or referred to in said last-named voucher.

IX.

The sum of nine thousand dollars, mentioned in the defendant's plea of set-off, was retained by the defendant out of the sum of thirty thousand seven hundred and seventy-eight dollars and eighteen cents paid by the defendant to McKnight & Richardson, on account of the indebtedness of the defendant to the said Simeon Hart, on the 31st day of January, A. D. 1873, and the defendant still retains the said sum of nine thousand dollars to its own use. (13 C. Cl's R., 292.)

X.

All the vouchers upon which this action is based were issued in duplicate, but no evidence has been offered to account for the counterpart.

40 XI.

The said Simeon Hart has deceased intestate since the commencement of this suit, and the claimant, James P. Hague, has been duly appointed by the proper court, in Texas, to administer upon his estate.

Upon the foregoing facts the Court decides as conclusion of law—That, for the reasons stated in the opinion of the Court, the claimant's petition must be dismissed.

[NOTE BY THE CLERK.—For the opinion delivered by the Court June 7, 1880, see 15 C. Cl's Reports, page 424.

JOHN RANDOLPH,
Ass't Clerk C't of Claims.]

XVIII.—*Judgment. Entered June* 7, 1880.

At a Court of Claims held in the city of Washington on the 7th day of June, A. D. 1880, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, find for the defendants, and do order, adjudge, and decree that the petition of the claimant, James P. Hague, administrator of Simeon Hart, deceased, be dismissed.

41 XIX.—*Order Granting a New Trial, Jan'y* 31, 1881.

At a Court of Claims held in the city of Washington on the 31st day of January, A. D. 1881—

The motion for a new trial in this case filed November 29, 1880, was argued by Mr. Wilson for the motion and Mr. Blair opposed, and it was ordered that the motion be allowed and the case remanded to the general docket.

XX.—*Reargument and Submission of the Case, May 3d and 4th*, 1881.

It appears of record that at a Court of Claims held in the city of Washington on the third and fourth days of May, A. D. 1881, Mr. Wilson made the opening argument for the claimant; Mr. Blair was heard for the defendants; Mr. Shellabarger replied for the claimant, and the case was submitted.

42 XXI.—*Findings of Fact and Conclusion of Law. Filed May* 16, 1881.

This case having been heard before the Court of Claims, the Court, upon the evidence, finds the facts to be as follows:

I.

On the 3d March, 1861, Thomas K. Jackson was and for some time had been a first lieutenant of infantry in the army of the United States, and acting assistant commissary of subsistence and acting quartermaster at Fort Bliss, in Texas. On the 1st day of April, 1861, he resigned from the army of the United States, and his resignation was accepted, and he entered the rebel service.

II.

On the same 3d day of March John B. Grayson was and for some time before had been a major and commissary of subsistence and brevet lieutenant colonel in the army of the United States, on duty as chief commissary of subsistence of the department of New Mexico. He was relieved April 19, 1861, as set forth in Finding IX, and left the department on the 17th of the following June. He then proceeded to San Antonio, Tex., where Col. Earl Van Dorn, on the 21st of April, 1861, had taken command of the insurgent forces gathered there. From that place he resigned from the army of the United States, on the 1st day of July, 1861, and entered the rebel service.

III.

On the same 3d day of March Edward Treacy was a second lieutenant in the regiment of mounted riflemen in the army of the United States, and then was and for two months previous had been on duty as acting assistant quartermaster and acting commissary of subsistence at the post of Fort Craig, in New Mexico, and continued at such post on such duty until May 1, 1861. He remained loyal. His services in the army were terminated by his death, February 15, 1864.

IV.

On the same 3d day of March Simeon Hart, the claimant's intestate, was residing in El Paso, Tex., and was in active sympathy with those who were inciting to rebellion. In April, 1861, he joined the insurgents, and then and afterwards furnished them with supplies, money, and means of transportation to carry on their invasion and campaign into New Mexico. On the 3d November, 1865, the President granted to said Hart a full pardon and amnesty for all offenses committed by him arising from participation, direct or implied, in the rebellion.

43

V.

On the 28th June, 1860, said Hart contracted in writing with said Jackson to deliver to the United States at Fort Butler, at or near Hatch's rancho, in New Mexico, on or before October 1, 1860, 100,000 pounds of flour, at 13 cents a pound; and the United States contracted to receive and pay for the same. No deliveries are shown under this contract; but deliveries for which no contract is proven are shown as follows, and payment therefor in full, viz:

1860. September 4.	At Fort Craig, N. Mex.	21,000 pounds, at 12 cents.
1860. October 8.	At Albuquerque, N. Mex.	36,000 pounds, at 13 cents.
1860. November 15.	At Fort Craig, N. Mex.	19,000 pounds, at 12 cents.
	In all	76,000 pounds.

VI.

On the 3d day of November, 1860, said Hart contracted in writing with said Jackson to deliver flour to the United States as follows, the

deliveries commencing immediately, and to be completed before January 15, 1861; and the United States contracted to receive and pay for the same, viz:

At Fort Fillmore, N. Mex.	10,000 pounds, at 16 cents.
At Fort Craig, N. Mex.	50,000 pounds, at 18½ cents
At Albuquerque, N. Mex.	75,000 pounds, at 13 cents

The following deliveries were made under said contract of November 3, 1860, and have been paid for in full, at the contract prices:

		Pounds.
At Fort Fillmore, November 17, 1860		10,000
At Fort Craig, November 15, 1860	2,000	
At Fort Craig, January 16, 1861	24,000	
At Fort Craig, January 29, 1861	24,000	
		50,000
At Albuquerque, January, 31, 1861	40,600	
At Albuquerque, February 18, 1861	11,300	
At Albuquerque, balance in May, 1861, as will appear in Finding VIII	23,100	
		75,000

VII.

On the 9th day of November, 1860, the said Hart addressed the following letter to the said Grayson, and the said Grayson accepted the offer made therein, but no written acceptance is shown or set up except the one indorsed thereon. El Paso, where this letter is dated, is near Fort Bliss, to which it is addressed. The offer in said letter is described in the voucher hereinafter set forth as the contract of November 10. No agreement on the part of the United States to take any part of the 263,000 pounds of flour offered by said letter is shown except by said letter and by its acceptance by Colonel Grayson. Said letter and the acceptance indorsed thereon are as follows:

EL PASO MILLS, TEXAS, 9 *November*, 1860.

COLONEL: After declining yesterday to undertake to furnish your dep't any more flour beyond the amounts called for by our special contract of of the 3d inst., and being since informed by yourself and Col. Fauntleroy, com'g dep't, that you have not time to order a supply from New Orleans to fill up deficiences of contractors in New Mexico, to oblige you and Col. Fauntleroy I have determined to fill your order for 263,000 pounds from my Chihuahua mills, although I shall have serious difficulty in procuring the requisite am't of wheat in Chihuahua.

I hereby agree to furnish from my Chihuahua mills the above amount of 263,000 pounds of good and wholesome flour on terms similar to those of our special contract of 3d inst. made with Lt. T. K. Jackson, A. A. C. S., by your order." If you receive it here or at Ft. Bliss, at 15 cts. per lb.; if at Ft. Fillmore, at 16 cts. per lb.; if at Ft. Craig, 18½ cts. per lb.; if at Ft. Stanton, 18½ cts. per lb.; if at Albuquerque, 20½ cts. per lb. You are to give me timely notice as

to the posts you will require it to be delivered at, and to order its delivery before the first of July next, as I will have all this flour here from my Chihuahua mills for delivery on your orders by the first of next April.

I have established a flour depot at Doña Aña, New Mexico, 60 miles north of here, to facilitate forwarding flour to posts in N. Mexico, as you may order it.

Very respectfully, your ob't serv't,

S. HART.

Colonel John B. Grayson, C. S., U. S. Army, Fort Bliss, Texas.

Approved as recommended by me, & accepted by order of Col. T. Y. Fauntleroy, com'd'g dept. New Mexico.

JOHN B. GRAYSON,
Bre. Lt. Col. & C. of S.

Fort Bliss, Texas, November 10th, 1860.

VIII.

In May or June, 1861, the said Grayson issued the following voucher for flour delivered to the United States by said Hart under the contract of November 3 and the letter of November 9. Of the amounts therein described as delivered at Albuquerque, 23,100 pounds were delivered under the contract of November 3, as shown in Finding VI, and 82,196 pounds are claimed as having been delivered there under the alleged contract of November 10, as set forth in the letter of November 9.

The United States to Simeon Hart, Dr.

1861.		
May 13.	To 51,920 lbs. flour delivered at Albuquerque, under the contracts of 3d and 10th November, 1860, at 20½ cents	$10,643 60
May 23.	To 49,800 lbs. flour delivered at Fort Stanton, under the contract of 10th November, 1860, at 18½ cents per pound	9,213 00
May 26.	To 52,776 lbs. flour delivered at Albuquerque, under the contracts of 3d and 10th November, 1860, at 20½ cents per pound	10,819 08
May 30.	To 500 lbs. flour delivered at Albuquerque, to make up short deliver-s under the contracts of 3d and 10th November, 1860, at 20½ cents per pound	102 50
		$30,778 18

I certify that the above above account is correct and just; that the services were rendered as stated, and necessary for the public service.

I certify on honor that the above account is correct and just; that this flour has been faithfully issued; that I have accounted for this flour by the receipts of officers duly qualified to receive the same;

that it was purchased at the prices mentioned and contracted for (see contracts of 3d and 10th November, 1860); and that Judge Hart is entitled to the amount specified on the face of this account; and I have not paid this account, owing to the order of the Secretary of War, through the Commissary General, of 11th May, 1861.

JNO. B. GRAYSON,
Brv't Lt. Col., C'ry S'e.

This qoucher was assigned to McKnight and Richardson. The accounting officers of the Treasury allowed $30,675.68 upon it, and that amount was paid in full, as follows:

Cash to the assignees of the voucher	$21,675 68
Credit to the United States against the obligations of Hart as bondsman for Colonel Grayson	9,000 00
	30,675 68

45 And this settlement was sustained by this Court, McKnight's case (13 C. Cl's R., 292), and by the Supreme Court on appeal (98 U. S., 179).

IX.

Capt. John P. Hatch was, on the 19th April, 1861, ordered by the adjutant general to relieve Colonel Grayson as chief of the subsistence department in New Mexico. On the 1st June the commander of the department directed Captain Hatch to enter upon his duties He did so at once. Colonel Grayson left the department on the 17th June. On the 25th June from within the enemy's lines he wrote the following letter to the said Hatch:

EL PASO, TEXAS, *June 25th*, 1861.

SIR: I have the honor to enclose herewith a memorandum contract made by me with Judge Simeon Hart on the 10th day of Nov., 1860, for 263,000 pounds of flour. This contract was made by positive order of Col. Fauntleroy, commanding Depart. of New Mexico. One hundred and ten thousand pounds of this flour has been duly delivered, leaving a balance of 153,000 lbs. (one hundred fifty-three thousand pounds), which Judge Hart has in his possession here subject to your orders. The enclosed memorandum contract will show what the prices are at the points of delivery in New Mexico.

I also enclose the contract made between Lieut. Jackson & Judge Hart, recommended by me and ordered by Col. Fauntleroy, made the 3rd November, 1860.

Respectfully y'r ob't serv't,

JOHN B. GRAYSON,
Bre. Lt. Col. & C. of S.

Capt. John P. Hatch, A. C. S., U. S. Army, Sata Fé.

The Court finds as a fact that at the date of said last-named letter said Hart had in his possession and subject to his control, at El Paso, in Texas, within the enemy's lines, 153,000 pounds of flour, under the said contract of November 9–10, which had not then been, and has never since been, actually delivered to the United States.

X.

The whole amount of flour returned by Grayson and by Jackson as delivered under the said contract of November 9–10 for the delivery of 263,000 pounds of flour, and reported by Grayson as on hand June 25 within the enemy's lines for delivery under the same contract, is as follows:

	Pounds.
Delivered at Albuquerque, as shown by Finding VIII	105,196
Delivered at Fort Stanton, as shown by Finding VIII	49,800
Delivered at Santa Fé April 21, 1861	32,000
Delivered at Santa Fé April 28, 1861	17,800
On hand at El Paso as above June 25, 1861	153,000
	357,796

XI.

The following deliveries of flour were made at Fort Bliss, and were paid for at the rate of 9½ cents a pound, and the payments received in full satisfaction:

	Pounds.
1860, October 8	6,810
1860, November 9	4,000
1860, December 10	4,102
1861, January 16	4,000
1861, February 20	3,000
1861, March 3	32,000
	53,912

46 No contract was shown under which this flour was delivered and paid for other than those already set forth. The following voucher for flour was also given by said Jackson to said Hart:

The United States to Simeon Hart, Dr.

Date of purchase.		Dollars.	Cents.
March 3, 1861.	For 30,000 lbs. flour delivered at Fort Bliss, Texas, @ 9½c	2,850	00
	Total, two thousand eight hundred and fifty dollars	2,850	00

I certify that the above account is correct and just, and that the articles have been accounted for on my provision return for the month ending on the 31st of March, 1861, and that the account has not been paid by me in consequence of the want of funds.

THOMAS K. JACKSON,
1st Lt. of Inf'y, A. A. C. S.

This voucher having been transmitted to Washington by said Hart the Commissary General of Subsistence wrote him the following letter in relation to it:

OFFICE OF THE COMMISSARY GENERAL OF SUBSISTENCE,
WASHINGTON CITY, *May* 22, 1861.

SIR: Your account of flour delivered at Fort Bliss, Texas, has been examined at this office and transmitted to the third auditor for settlement, and the assistant treasurer of [the] United States at New Orleans has been this day requested to pay you the sum of two thousand eight hundred and fifty dollars in satisfaction of your account.

Very respectfully, &c.,

J. P. TAYLOR,
Commissary General Subsistence.

Simeon Hart, Esq., El Paso, Texas.

Among the papers transmitted to the Court from the Treasury Department, in answer to a rule made at the claimant's request are the following copies of papers on file or of record in that department:

No. 5042. TREASURY DEPARTMENT,
THIRD AUDITOR'S OFEICE, *May* 24, 1861.

I certify that there is due from the United States to Simeon Hart, contractor, the sum of two thousand eight hundred and fifty dollars on account of "subsistence," by general account of money advanced for 30,000 lbs. of flour @ 9½ cents per lb., delivered to Lieut. Thomas K. Jackson, 8th Infantry, acting assistant commissary at Fort Bliss, Texas, in the month of March, 1861, as per voucher herewith, $2,850.00 (remit to Simeon Hart, contractor, El Paso, Texas, by draft on assistant treasurer at New Orleans, La., on account of subsistence, $2,850.00), — appears from the statements and vouchers herewith transmitted for the decision of the second comptroller of the Treasury thereon.

R. J. ATKINSON, *Auditor.*

To James M. Cutts, Esq., second comptroller of the Treasury.

SECOND COMPTROLLER'S OFFICE.

I admit and certify the above balance this 25th day of May, 1861.

J. MADISON CUTTS,
Second Comptroller.

May 28, 1861. Requisition No. 4357. Simeon Hart, contractor at El Paso, Texa . Due on sett., per certificate of the 2d comptroller. No. 5042.

Subsistence ..... $2,850.00.

No warrant or draft was ever issued pursuant to said requisition. The records of the Treasury Department do not show that it has been paid.

47 XII.

In Jackson's provision returned he charged himself with the following flour as purchased from Hart:

	Pounds.
1860, November	35,000
1860, December	4,102
1861, January	28,000
1861, February	78,900
1861, March	62,000
	208,002

In these returns all the flour received by him is apparently accounted for, but in so accounting he credits himself with 50,600 pounds of flour as delivered to "J. W. Magoffin, agent." Magoffin called himself the agent of the State of Texas, and professed to receive the subsistence stores at Fort Bliss on its surrender in March, 1861, on behalf of the State. The receipt which he gave Jackson therefor was as follows:

Received, Fort Bliss, Texas, March, 1861, of 1st Lieut. Thomas K. Jackson, 8th Infantry, A. A. C. S., U. S. Army, the following subsistence stores, viz:

* * * * * *

600 flour.

* * * * * *

J. W. MAGOFFIN,
Agent for the State of Texas.

Grayson's provision returns for November and December, 1860, if any were made, are not before the Court. His returns for January, February, and March, 1861, show no purchases from Hart. His April returns show the following purchases from him:

	Pounds.
April 21	32,000
April 28	17,800

He made no returns after April, 1861.

XIII.

Among the papers transmitted by the Secretary of War with this case is a voucher dated June 21, 1861, and a certificate of Colonel Grayson thereon. The certificate is on a different kind of paper from the voucher, and is pasted to it, and there is no other evidence to show when this was done, or whether the voucher itself ever came under Grayson's observation. The said voucher and certificate are as follows:

The United States to Simeon Hart, Dr.

June 21st, 1861.	To error in voucher No. 5, 2nd qr. 1861, being for 32,000 lbs. flour, at 12 cts. per lb., in lieu of 13 cts. per lb. for 12,100 lbs., as per contract June 28th, 1860	121 00
	And 20½ cts. per lb., for 19,900 lbs., as per contracts of Nov. 3rd, 1860	1,591 50

And also error in voucher No. 9, 2nd qr. 1861, being for 17,800 lbs. flour, at 12 cts. per lb., in lieu of 20½ cts. per lb., as per contract Nov. 3rd, 1860	1,513 00
Making total in errors	3,325 50

Error on the first item, 1 ct. pr. lb.; on second and third items, 8½ cts. pr. lb.

I certify on honor that the above account is correct and just; that this flour has been faithfully issued; that I have accounted for this flour by the receipts of officers duly qualified to receive the same; that it was purchased at the prices mentioned and contracted for (see contract of 28th June and 3rd Nov., 1860), and that
48 Judge Hart is entitled to the amount specified on the face of this account, and I have not paid this account owing to the order of the Secretary of War, through the Commissary General, of 11th May, 1861.

JOHN B. GRAYSON,
Brev't Lt. Col. & C. of S.

It does not appear in direct proof in what manner the said account or voucher came into the possession of said Hart or where the same was signed by the said Grayson; but the Court have no doubt, from the surrounding circumstances, and find as a fact, that when this voucher purports to have been issued both Grayson and Hart were within the enemy's lines.

XIV.

There is nothing due from the United States to the claimant for flour delivered after April 13, 1861. The United States paid the said Hart, or his assignees, for flour alleged to have been delivered after April 13, 1861, but never delivered, more than the amounts claimed in this suit as due for corn and forage, said payments being made partly in cash to him or his assignees and partly by a credit allowed him as security for Grayson's faithful performance of his official duties, as shown in the McKnight case.

XV.

Among the papers so transmitted by the Secretary of War is the following voucher, signed by the said Thomas K. Jackson:

The United States to Simeon Hart, Dr.

Date of purchase.		Dollars.	Cents.
Nov. 25, 1860.	For foraging & taking care of 25 public animals of the Q. M. D. from the 5th to the 25th Nov., 1860, 20 days, @ 75c. pr. head pr. day	375	00
Jan'y 3, 1861.	For foraging & taking care of 18 pub. animals of the Q. M. D. for 12 days, commencing the 22d of Dec., 1860, & ending the 3 of Jan'y, 1861, @ 75c. pr. head pr. day	162	00

Feb. 22, 1861. For foraging & taking care of 21 pub. animals of the Q. M. D. for 10 days, commencing the 13th & ending the 22d Feb., 1861, @ 75c. pr. head pr. day 157 50

694 50

I certify that the above account is correct and just; that the services were rendered as stated and that they were necessary for the public service, & that the account has not been paid by me in consequence of the want of funds.

THOS. K. JACKSON,
1st Lt. of Inf'y, Quartermaster.

Received at ——, the —— of ——, 185–, of —— ——, quartermaster United States Army, the sum of six hundred and ninety-four dollars and fifty cents, in full of the above account.

S. HART.

The said Jackson made no other return of this matter to the Quartermaster General's office, and, except this voucher, there is nothing in the record to show that the services set forth in the voucher were rendered to the defendants by said Hart or that they were worth the sums therein named.

XVI.

By order of the Secretary of War the following instructions were, on the day of their date, addressed to the said Hatch as the successor of said Grayson:

OFFICE COMMISSARY GENERAL SUBSISTENCE,
WASHINGTON, *May* 11, 1861.

CAPTAIN: The Secretary of War directs that no further payments be made to Mr. Simeon Hart, of El Paso, on account of moneys
49 due him by the United States, and that he be instructed to forward his accounts, properly certified, to this office. You will give instructions accordingly.

Very respectfully, your most obedient servant,

J. P. TAYLOR,
A. C. G. Sub.

Capt. John P. Hatch, Mounted Rifles, Acting C. S., Santa Fé, N. M.

The said Treacy was at Fort Craig, acting under said Hatch, when Taylor's letter was received. He thereupon addressed the following letter from Fort Craig to the said Hart within the enemy's lines at El Paso:

OFFICE OF THE A. A. Q. M.,
FORT CRAIG, N. M., *June* 12*th*, 1861.

SIR: I herewith enclose for your information a copy of a letter received on the 6th inst. from the acting commissary of subsistence

of this department, relative to the settlement and payment of accounts due you by the United States.

To comply with the instructions contained in that letter, I have again to ask you to send me at your earliest convenience all my receipts for corn and sacks, and, in the event of your doing so, I shall give you a single receipt for the balance, upon which you can base an account, to which I will certify, and then by you forwarding it to the bureau of the Quartermaster General there will be no difficulty in obtaining a speedy settlement.

The following is an exposition of how our account now stands:

Paid.

61½ fanegas of corn, at 6.50 p'r fanega	$3,000 00

Unpaid.

1,624½ fanegas of corn, @ 6.50 p'r fanega	10,559 25
1,408 corn sacks, @ 20 cts. each	881 60
Total indebtedness	$11,440 85

I am, sir, very respectfully, your ob'd't serv't,

EDWARD TREACY,
2nd Lt. R. M. R., A. A. Q. M.

Mr. Simeon Hart, &c., &c., El Paso, Texas.

Record, p. 51.

On the 19th day of June, 1861, the said Lieut. Treacy made out, signed, and certified the following vouchers, viz:

No. 12.

The United States to S. Hart, Dr.

Date of purchase.		Dollars.	Cents.
March 31, 1861.	For 935 fanegas of corn, at 6.50 per fanega	6,077	50
" "	For 3,278 corn sacks, at 20 cts. each	655	60
		$6,733	10

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending 31st of March, 1861.

EDWARD TREACY,
2nd Lieut R. M. R., A. A. Q.

Fort Craig, N. M., June 19th, 1861.

No. 12.

The United States to S. Hart, Dr.

Date of purchase.		Dollars.	Cents.
April 22nd, 1861.	For 689½ fanegas of corn, at $6.50 p'r fanega	4,481	75
" "	For 1,130 corn sacks, at 20 cents each	226	00
		$4,707	75

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30th of June, 1861.

EDWARD TREACY,
2d Lieut. R. M. R., A. A. Q.

Fort Craig, N. M., June 19th, 1861.

It does not appear by positive proof how these vouchers reached said Hart, but as the said Hart was at that time within the enemy's lines, actively co-operating with them, the court finds as a fact that they were transmitted to him by Treacy across the enemy's lines.

XVII.

The said Hart transmitted the said last-named vouchers to Washington, where they were presented for allowance and payment. The accounting officers of the Government disallowed them, and they have never been paid.

The said Treacy, in the abstracts of purchases rendered with his quarterly returns of quartermaster stores for the quarters ending March 31, 1861, and June 30, 1861, returned the following articles as purchased from the said Hart:

March 14, 21,539 pounds of corn	$1,000	00
March 31, 195,517 pounds of corn, 3,278 corn sacks	9,733	20
April 22, 74,984 pounds of corn, 1,130 corn sacks	3,707	40
	14,440	60

And in his abstracts of purchases paid for accompanying his accounts-current for the same quarters he returned the following payments to the said Hart:

March 14, 21,539 pounds corn	$1,000	00	
May 15, 43,077 pounds corn	2,000	00	
		3,000	00
		$11,440	60

On the foregoing facts the Court finds as a resulting fact that prior to the 13th day of April, 1861, the said Hart sold to the defendant corn and corn sacks of the value of $10,733.20, upon which he has received from the defendant the sum of $3,000; and that after the 13th day of April, 1861, to wit, on the 22d day of April, 1861, he

sold to the defendants corn and corn sacks of the value of $3,707.40, for which neither he nor his representatives have been paid.

XVIII.

The sum of $9,000, mentioned in the defendant's plea of set-off, was retained by the defendant out of the said sum of $30,778.18 paid by the defendant to McKnight & Richardson, on account of the indebtedness of the defendant to the said Simeon Hart, on the 31st day of January, A. D. 1873, and the defendant still retains the said sum of $9,000 to its own use.

XIX.

The said Simeon Hart has deceased intestate since the commencement of this suit, and the claimant, James P. Hague, has been duly appointed by the proper court in Texas to administer upon his estate.

51 XX.

All of the vouchers embraced in this suit were transmitted by the said Hart to the War Department for settlement and payment at the dates following, viz:

The voucher for $2,850, dated March 3, 1861, was transmitted to the Commissary General of Subsistence in a letter dated April 27, 1861, and received by that officer May 22, 1861.

The two vouchers certified by Lieutenant Treacy, and amounting to $11,440.85, and the voucher certified by Lieutenant Jackson for $695.50, were transmitted to the Quartermaster General in a letter dated June 25, 1861, and were received by that officer on the 2d day of August, 1861.

The voucher certified by Lieutenant Colonel Grayson for the sum of $3,325.50, together with a voucher certified by Lieut. Z. R. Bliss, A. A. C. S., for the sum of $87.52, and a voucher also certified by Lieutenant Colonel Grayson for the sum of $30,778.18, were transmitted to the Commissary General in a letter dated June 26, 1861, and received by that officer August 11, 1861.

And the said vouchers and each of them remained in the custody and under the control of the officers of the Executive Department of the Government from the time they were so received until they were (with the exception of the voucher for $30,778.18) transmitted by the Secretary of War, with other papers in this case, to this Court. The said voucher for $30,778.18 was settled and paid in the Treasury Department in the month of January, 1873, and was in form as shown in Finding VIII.

On the foregoing facts the Court decides as conclusions of law:

That for the reasons stated, in the opinion of the Court, the claimant's petition must be dismissed in manner as shown in the announcement of judgment contained in the said opinion.

XXII.—*Opinion of the Court. Delivered May* 16, 1881.

DAVIS, J., delivered the opinion of the Court.

This case was first heard at the December term, 1879 (15 C. Cls., R 414). The claimant, being dissatisfied with the judgment then rendered, and having discovered new evidence, asked for a rehearing. The exhaustive argument of the junior counsel on the facts as now presented, and the comprehensive and able exposition of the law by the senior counsel, leave the Court no room for misunderstanding their theory of the case in both branches.

I. A question of jurisdiction arises at the threshold with regard to a large portion of the claim. The claims come here from the Department of War, by virtue of a letter from the Secretary of War, transmitting them to this Court for adjudication under the statute. As some question was made at the argument as to the cause of the transmission it may be as well to insert the Secretary's letter textually in this opinion:

WAR DEPARTMENT,
WASHINGTON CITY, *October* 13, 1873.

To the honorable judges of the Court of Claims:

The undersigned, Secretary for the Department of War of the United States, hereby represents that a claim has been made upon said department by Henry B. Ward, assignee of Simeon Hart, for payment for supplies furnished the Quartermaster and Commissary Departments under contract.

52 This claim involves disputed facts and controverted questions of law, and the amount in controversy exceeds $3,000, and it is therefore deemed proper to transmit the claim, with all the vouchers, papers, proofs, and documents pertaining thereto, on file in this department, to the Court of Claims, to be there proceeded in according to law.

WM. W. BELKNAP,
Secretary of War.

It appears by the petition that a large part of the demands sued for in this action accrued prior to April 13, 1861. In his fifth request for findings the claimant asks us to find that "on the 3d day of March, 1861, Simeon Hart, the claimant's intestate, was residing in El Paso, Texas, and was in active sympathy with those who were inciting to rebellion;" and that "in April, 1861, he joined the insurgents, and then, and afterwards, furnished them with supplies, money, and means of transportation to carry on their invasion and campaign into New Mexico."

The joint resolution of Congress of March 2, 1867, which is embodied in the Revised Statutes as section 3480, enacts as follows:

That until otherwise ordered it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government which accrued or existed prior to the 13th day of April, 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion, or in favor

of any person who, during said rebellion, was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon heretofore granted or hereafter to be granted shall authorize the payment of such account, claim, or demand until this resolution is modified or repealed: Provided, That this resolution shall not be construed to prohibit the payment of claims founded upon contracts made by any of the departments where such claims were assigned or contracted to be assigned prior to April 1, 1861, to creditors of said contractors, loyal citizens of loyal States, in payment of debts incurred prior to March 1, 1861.

It is plain from the pleadings that so far as the date is concerned most of the demands in suit come within this act. It is also clear, from the claimant's request, that his intestate was one of the persons to whom the act forbids payment to be made. The provisions of this act, so far as they have any force, clearly apply to such demands, unless they are taken out from it by some other act.

The claimant asks us to find that on the 4th of November, 1865, his intestate received a full pardon, and he maintains that it operated to set aside the provisions of this act as to him and his claims. We cannot concur in this view. It seems to us that it rests upon a radical error as to Hart's status in the executive departments and in this Court, after the close of the war.

The facts stated in the claimant's request show that Hart was guilty of levying war against the United States, of adhering to their enemies, and of giving them aid and comfort within the United States. For these acts he was liable, on proper conviction, to the punishments provided by the first section of the act of April 30, 1790 (1 Stat. L., 112). It also shows that he committed the crime of treason against the United States and became liable on proper conviction to one of the punishments provided by sections 1 and 3 of the act of July 17, 1862 (12 Stat. L., 589). It also shows that he was guilty of the offense of inciting, setting on foot, assisting, or engaging in the rebellion, and of giving aid or comfort thereto, and became liable, on proper conviction, to the punishments provided by sections 2 and 3 of the last-named act (*Ibid*, 590). It also shows a state of things which authorized the seizure of his property, including the demands now in suit, and its confiscation by means of judicial proceedings instituted for that purpose, under the provisions of sections 5, 6, and 7 of the last-named act (*Ibid*, 590, 591).

53 The close of the war left Hart liable to be proceeded against for any or all these offenses against the statutes of the United States, and to be punished for each or all when convicted, and liable to the confiscation of his property. From all that liability the President's pardon of November 9, 1865, completely exempted him.

So, too, in order to authorize this Court to render a judgment in his favor, it was necessary that he should set forth in his petition that he had at all times borne true allegiance to the Government of the United States, and that he had not in any way voluntarily aided, abetted, or given encouragement to the rebellion; and the Govern-

ment could traverse this, and if on the trial the issue should be decided against him, his petition would be dismissed (act of March 3, 1863, § 12). And in proceedings under the captured and abandoned property act he was obliged to prove, affirmatively, that he had never given aid or comfort to the rebellion (act of March 12, 1863, § 3). From the effect of these statutory provisions also the pardon relieved him.

But disability to receive debts due to him, whether from individuals or the United States, was not made a consequence of any offense. So far as his relations with the United States were concerned, Hart had, at the time of the receipt of his pardon, or at the time of the passage of the joint resolution of March 2, 1867, committed no offense which took away from him the right to be paid at the Treasury any sums of money due to him by the United States for which no proceedings for confiscation had been instituted. It is, therefore, clear that there was no disability of this kind for the pardon to operate on when it was granted.

Hart's disabilities did not grow out of treasonable acts for which, so far as appears, he was never indicted, but from another and quite different relation which he bore to the United States—that of a public enemy. Before the war he could make a valid contract with the Government, could fulfill that contract, and could earn the right to the compensation provided for its fulfillment. The war converted him into a public enemy irrespective of his individual acts. During its existence he could not contract with inferior Government officials, could not earn compensation on such contracts, and could not receive payment for services. When the war closed he reverted to his original status. He could contract anew with the Government, could receive pay under the new contract, and could receive pay earned under an old contract prior to the war, provided it had not been paid or confiscated. He needed no pardon to enable him to do this.

As the President's pardon conferred no increased right upon Hart to obtain pay under the old contracts, so the resolution of March 2, 1867, took nothing from him which had been conferred by the pardons. It impinged upon no function intrusted by the Constitution to the Executive. It did not, like the legislation which was reviewed in Klein's case (13 Wall., 128), attempt to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President. Congress simply forbade claims of this class to be paid until it should otherwise order.

The claimant contends that this cannot be done, because it practically leaves him without a remedy. This position is entirely untenable. The only remedy which the Constitution provides for a claimant against the Government is in Congress. It says: "No money shall be drawn from the Treasury but in consequence of appropriations made by law." It provides for the distribution of work in carrying on the Government in executive departments. It contemplates the passage of general laws providing machinery for doing this work. Such departments have been organized, and
54 such legislation has been had and is constantly going on.

Congress provides for the payment of the work which it thus authorizes by general appropriations, and it directs by general legislation what officers shall audit accounts presented for payment under general appropriations, and what officers shall authorize their payment. It delegates a portion of its power to this Court, and authorizes judgments to be rendered by it which shall be respected at the Treasury. All these provisions are wise; but we entertain no doubt that the same power which created them can abrogate them; that it can deny to the Court and the department the right to pass upon and pay any class of claims; still further, that it can refuse to appropriate for any or all classes of claims. The absolute control of the moneys of the United States is in Congress, and Congress is responsible for its exercise of this great power only to the people. As we said in our former opinion, "It is entirely within the power of Congress to indicate a class of persons who shall not be paid out of general appropriations, but shall come to Congress for relief."

Congress having, in the exercise of a clear constitutional right, provided that claimants like Hart should not be paid from general appropriations for claims that accrued prior to April 13, 1861, the Executive was powerless to consider such claims. Auditing and accounting are but parts of a scheme for payment; and, in our opinion, the arrest of the object was the arrest of the means for obtaining it.

The act of 1868 was strictly auxiliary, for the purpose of assisting heads of departments in investigating and disposing of ordinary claims against the Government. It conferred on claimants no right or remedy which did not previously exist. If the resolution of 1867 deprived claimants of the right to receive pay, the subsequent act did not restore that right. On the contrary, it expressly restricted the reference of claims to the classes of which the Court already had jurisdiction. It would be an abuse of construction to extend the right to specific classes of claims which Congress had carved out of the mass and reserved in terms for future legislation. Should the head of a department be in doubt (as was the case in Padelford's case, 9 Wall., 531) whether a claimant comes within the excluded class, he may refer the case to this Court. It would then become our duty to take jurisdiction; but as soon as the fact is ascertained that the claim is within the prohibition of the resolution of 1867, the Court must say that, being a claim which the Executive was forbidden to pay, its reference does not confer jurisdiction to proceed with it to final judgment. With this modification, induced by the recent argument, we repeat the former expression of our views:

That would be making the Treasury do indirectly what Congress has said it cannot do directly. Were we to render judgment in the claimant's favor on such claims we should invite the officers of the Treasury to do an act, under cover of our judgment, which Congress plainly intended that they should not have authority to do in any contingency. We are not required to determine whether we should be authorized to render judgment against the Government on

this class of claims if the claimant had appeared on his own motion. We confine ourselves to this: that when the head of an executive department is forbidden by law to pay a claim, there can arise no disputed fact, no controverted question of law, nothing in which our decision can affect a class of cases, nothing in which it can furnish a precedent for the future action of an executive department, nothing in which any authority, right, privilege, or exemption can be claimed or denied under the Constitution of the United States, to warrant the transmission of the claim to this Court, or to confer upon this Court a jurisdiction, derived through the department, which is expressly denied to the department. The duty of the executive officer is to deny the claim irrespective of all such considerations. He has no power to assist the claimant to any other remedies.

The claimant's counsel, in answer to this, ingeniously contends that the effect of the President's pardon is a constitutional ques-
55 tion. The act authorizing the Executive to transmit claims here provides that it may be done, among other cases, where any authority, right, privilege, or exemption is claimed or denied under the Constitution of the United States. He argues with great vigor that the right of transmission must exist in spite of the resolution of 1867, because the very constitutional question to be tried is raised by that resolution.

The answer to this argument is that the case is not sent here for such a cause or with such an object. The claim is transmitted here under a different and distinct provision of the act, as a claim involving disputed facts and controverted questions of law, in which the amount in controversy exceeds $3,000. No constitutional question was suggested in the Secretary's letter. None was suggested at the former trial. It is an ingenious afterthought of counsel; but it cannot be raised here by counsel for the purpose of giving us a jurisdiction we should not otherwise have had. Our jurisdiction in these cases is special; wider than the Court enjoys in cases commenced by the voluntary action of claimants, inasmuch as the statute of limitations cannot be interposed, and depends upon the letters transmitting them for its origin. We cannot travel beyond the Secretary's letter in order to ascertain whether another reason existed which might also have justified him in transmitting the case here. And even if we could, we are all of opinion, as we have already stated, that our jurisdiction ceases when we ascertain that a law enacted within the constitutional power of Congress forbids payment of the claim by the Executive transmitting it. We cannot, then, proceed to give a judgment which may secure payment of the claim in violation of the act, nor, on the other hand, a judgment which will bar the claimant when the act is repealed. Therefore, as to all the claims prior to April 13, 1861, we decline to take jurisdiction further than to find the facts upon which, taken in connection with the pleadings and request for findings, we rest our disposition of this part of the case.

II. For a proper understanding of the disposal which we make of

the remainder of the case, it will be necessary to refer briefly to some of the principal facts in the findings.

The controversy arises on disputed vouchers for flour supplied to the subsistence department and for corn and forage supplied to the quartermaster's department. The two classes of transactions are distinct.

It is claimed that the flour was delivered under three contracts, all of which are found. One, of the 28th June, 1860, for 100,000 pounds, and one, of the 3d November, 1860, for 135,000 pounds, were made with Lieut. Thomas R. Jackson, of the Eighth Infantry, who was stationed at Fort Bliss, in the northwest corner of Texas, and acting as assistant commissary of subsistence. They were in the usual form. The third contract, for 263,000 pounds, was made with Col. John B. Grayson, who was the chief commissary of subsistence at Santa Fé, in New Mexico. It was made at El Paso, in Texas, near Fort Bliss, by means of a letter from Hart, dated November 9, making proposals, and a written indorsement thereon by Grayson, dated November 10, accepting the same.

Jackson and Grayson sympathized with the movement for secession and went over when the resistance became overt, Jackson in the latter part of March and Grayson on the 17th June. Hart, as we have already seen, was also an active sympathizer and participator in the rebellion.

Official documents from executive departments form part
56 of the findings, from which it appears that Jackson certified to the delivery by Hart of flour as follows:

		Pounds.
In New Mexico:	September 4, 1860, at Fort Craig	21,000
	October 8, 1860, at Albuquerque	36,000
	November 15, 1860, at Fort Craig	19,000
	November 15, 1860, at Fort Craig	2,000
	November 17, 1860, at Fort Fillmore	10,000
	January 16, 1861, at Fort Craig	24,000
	January 29, 1861, at Fort Craig	24,000
	January 31, 1861, at Albuquerque	40,600
	February 18, 1861, at Albuquerque	11,300
In Texas:	October 8, 1860, at Fort Bliss	6,810
	November 9, 1860, at Fort Bliss	4,000
	December 10, 1860, at Fort Bliss	4,102
	January 16, 1861, at Fort Bliss	4,000
	February 20, 1861, at Fort Bliss	3,000
	March 3, 1861, at Fort Bliss	32,000
		241,812

By means of the same documents it appears that Grayson certified to the delivery of flour by Hart as follows:

	Pounds.
The vouchers in McKnight's case (13 C. Cls. R., 292; 98 U. S., 179; Finding XIX)	154,996
His provision return for April	49,800
A further amount in his voucher of June 21, 1861, which does not appear in any other voucher	19,900
	224,696

The United States have paid vouchers for all the flour covered by Jackson's certificates, as above, and by Grayson's certificate in the McKnight case. There is another voucher certified by Jackson for the delivery of 30,000 pounds of flour at Fort Bliss on the 3d of March which has not been paid, and which is now disputed. Adding Grayson's certificates and Jackson's certificates, paid and unpaid, together we have an aggregate of 496,508 pounds, or so near to the aggregate of 498,000 pounds called for by the three contracts as to raise a strong presumption in the claimant's favor if there were nothing else in the case.

It appears, however, that on the 25th June, 1861, nearly three months after the date of the disputed delivery to Jackson, and several weeks after the last alleged delivery to Grayson, Hart had in his possession at El Paso, within the enemy's lines, 153,000 pounds of flour which he claimed was the property of the United States under the contracts. The conclusion is irresistible that about 150,000 pounds of flour, covered in part by the disputed voucher of Jackson and in part by other vouchers, most or all of which have been paid, never came into the actual possession of the United States. If delivered at all, all this property was delivered constructively, Hart retaining possession of it in the enemy's country.

The provision returns of Jackson and Grayson show some facts embodied in the findings which fortify these conclusions. Jackson charges himself with 208,002 pounds of flour bought from Hart. This includes the disputed voucher. In balancing the return he credits himself with 50,600 pounds, delivered to the agent of the State of Texas when Fort Bliss was surrendered. But the findings show that the agent of the State of Texas receipted for only 600 pounds. It was pressed upon us that this was a clerical error, but under the circumstances of this case we cannot accept such a theory.

57 Grayson made returns in January, February, March, and April. His April returns showed purchases from Hart to the amount of 49,800 pounds, all of which was delivered at Santa Fé and is accounted for. Of the alleged deliveries in May to the amount of 154,996 pounds, which formed the subject of controversy in the McKnight case, and of the 19,900 pounds included in the voucher of June 21 no return was ever made.

Some other facts in the public history of the time have a bearing upon the disputed voucher of Jackson. On the 18th February, 1861, Major General Twiggs issued an order for the evacuation of all the military posts in Texas, and required the troops, as soon as

the necessary preparations could be made, to march to the coast, taking with them provisions as far as the coast. The next day General Twiggs surrendered the force under his immediate command at San Antonio. The total force that was to be so embarked was 2,684 men. (Official Records, first series, vol. 1, page 524.) Of these, 320 men were stationed at Forts Bliss, Quitman, and Davis, in the northwest. (*Ibid*, 568.) On the 3d March both Hart and Jackson must have known that these posts were to be at once surrendered. In his capacity as quartermaster, Jackson must also have known the fact reported by the officer who commanded the little force in its march across Texas, that there was only transportation enough at Fort Bliss to carry subsistence for forty days. (*Ibid.*) If Jackson's vouchers are to be believed, he laid in on the 3d March six months' rations of flour for the whole force. When the surrender was made on the 9th May, at San Lucas Springs, about fifteen miles west of San Antonio, Jackson's name is not found among the list of officers reported as on duty at that time. (*Ibid.*)

With all these independent facts pointing in one direction, we have not hesitated to find as a resulting fact, bearing upon such vouchers as were subsequent in date to the 13th April, 1861, that there is nothing due from the United States to the claimant for flour delivered after April 13, 1861, and that the United States paid the said Hart or his assignees for flour alleged to have been delivered after April 13, 1861, but never delivered, more than the amounts claimed in this suit as due for corn and forage, said payments being made partly in cash to him or his assignees and partly by a credit allowed him as security for Grayson's faithful performance of his official duties as shown in the McKnight case. It is plain from the other facts found that if it had been open to us to act upon the flour claims prior to April 13th, it would have been our duty also to find that nothing was due for them.

This finding is reached by assuming as matter of law: 1st. That while Hart kept possession of the flour at El Paso there could be no constructive delivery of it to the United States; and, 2d. That the Court can make this finding, although the matter is not pleaded by the Government as a set-off. If the claimant desires a review of our action in this respect he is entitled to have this stated.

III. In our opinion, however, it is of little consequence whether this finding stands or falls. There are fatal objections in law to the claimant's recovery on the forage vouchers. They are three in number; one from Jackson and two from Treacy, who was stationed at Fort Craig as assistant quartermaster. Jackson's voucher and one of Treacy's vouchers were for goods alleged to have been delivered prior to April 13, 1861. No recovery can be had on these.

Treacy's second voucher was for corn delivered after April 13. At the former trial it was found that the only proof of delivery
58 of the corn was the voucher. The voucher was transmitted by Treacy to Hart across the enemy's lines. We held it to be absolutely void, and that there was no proof of the alleged delivery. The claimant has supplied other proof, and it is now found as a fact

that the corn was delivered. It only remains to consider whether Treacy could lawfully trade across the lines on the 22d April, 1861.

On that day there existed in Texas not only the technical state of war resulting from the President's proclamation, but an actual state of conflict. The effect of this upon private rights in the early stages of the rebellion has been the subject of frequent discussion in the Supreme Court. From the many cases we deduce these general conclusions. The theoretical rule which converts all inhabitants of enemy's country into enemies on the outbreak of a war, which ends business relations, dissolves partnerships, stops trade, and intercourse, and makes unlicensed dealings illegal, is inflexible. In applying this rule to transactions interrupted by the outbreak of a civil war which commences without previous declaration and without the ordinary premonitory forebodings, the courts endeavor to lighten it and mitigate its severity where its rigid application must produce inequity, but they have never swayed from it except for such a purpose, and have never departed from it so far as to leave the principle out of sight.

In the present case we can see no equities to induce us to hesitate to apply rigidly the rule which made all trading with Hart, a public enemy, on the 22d April, 1861, illegal, and all claims and demands growing out of it absolutely void. The subsequent combination between Hart and Grayson, and the dealings between Hart and Jackson, which have been examined, entitle Hart's representative to the benefit of no equitable considerations. This transaction was wholly outside of the operation of a pardon. It was illegal from the outset, and never constituted the foundation for a claim against the United States.

The judgment of the Court is, as to so much of the claimant's petition as relates to claims or demands which accrued or existed prior to the 13th day of April, 1861, that it be dismissed for want of jurisdiction in this Court to hear and determine said claims and demands, and without prejudice to the claimant, and as to so much of said petition as relates to claims and demands which accrued on or since the said 13th day of April, 1861, that it be dismissed on the merits.

59 XXIII.—*Final Judgment of the Court. Entered May* 16, 1881.

At a Court of Claims held in the city of Washington, on the 16th day of May, A. D. 1881, judgment was ordered to be entered as follows:

The Court, on due consideration of the premises, finds for the defendants, and do order, adjudge, and decree as to so much of the claimant's petition as relates to claims or demands which accrued or existed prior to the 13th day of April, 1861, that it be dismissed for want of jurisdiction in this Court to hear and determine said claims and demands, and without prejudice to the claimant, and as to so much of said petition as relates to claims and demands which accrued on or since the said 13th day of April, 1861, it be dismissed on the merits.

60 XXIV.—*Application for and Allowance of Appeal. June* 17, 1881.

JAMES P. HAGUE, Administrator of the Estate of Simeon Hart, Dec'd,
versus
THE UNITED STATES. } No. 7908.

The claimant prays an appeal from the judgment rendered herein, on the 16th day of May, A. D. 1881, to the Supreme Court of the United States, the amount claimed in the petition herein exceeding the sum of three thousand dollars.

JOHN J. WEED,
Attorney for Claimant.

Filed June 17, 1881.

At Chambers.

Allowed.
C. D. DRAKE, *Chief Justice.*

61 In the Court of Claims.

JAMES P. HAGUE, Administrator of the Estate of Simeon Hart, Deceased,
vs.
THE UNITED STATES. } No. 7908.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the findings of fact by the Court and the conclusion of law thereon filed June 7, 1880; of the judgment of the Court rendered June 7, 1880; of the allowance of a new trial; of the reargument and submission of the case; of the findings of fact and conclusion of law filed May 16, 1881; of the opinion of the Court delivered May 16, 1881; of the final judgment of the Court rendered May 16, 1881; of the application of claimant for allowance of appeal to the Supreme Court of the United States, and the allowance of same by Chief Justice Drake.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court, at Washington, this nineteenth day of October, A. D. 1881.

[Seal Court of Claims.]

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

Endorsed on cover: Court of Claims. No. 198. Juan S. Hart, administrator of the estate of Simeon Hart, deceased, appellant, *vs.* The United States. Filed 27th February, 1883.

118-62

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JAMES. H. McKENNEY.
CLERK

United States Supreme Court.

OCTOBER TERM, 1885.

NO. 198.

JUAN S. HART,

ADMINISTRATOR OF THE ESTATE OF SIMEON HART, DECEASED,

Appellant,

vs.

UNITED STATES.

Brief and Argument for Appellant.

JOHN J. WEED,

Attorney for Appellant.

R. O. Polkinhorn & Son, Printers.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

JUAN S. HART, *Administrator of the estate of Simeon Hart, deceased, Appellant.*
vs.
THE UNITED STATES.
} No. 198.

APPEAL FROM THE COURT OF CLAIMS.

Brief for Appellant.

I.

STATEMENT OF THE CASE.

This case was transmitted to the Court of Claims by the Secretary of War, under the provisions of the 7th section of the act of Congress approved June 25th, 1868. (15 Stats. at Large, p. 76.) The said section is now found in the Revised Statutes as section 1063.

The letter of the Secretary of War, transmitting the case to this Court, was as follows:

WAR DEPARTMENT,
WASHINGTON CITY, *October* 13, 1873.

To the Honorable Judges of the Court of Claims:

The undersigned, Secretary for the Department of War of the United States, hereby represents that a claim has been made on said Department by Henry B. Hart, assignee

of Simeon Hart, for payment of supplies furnished the Quartermaster and Commissary Departments under contract.

The claim involves disputed facts *and controverted questions of law*, and the amount in controversy exceeds $3,000, and it is therefore deemed proper to transmit the claim with all the vouchers, papers, proofs and documents pertaining thereto on file in this Department to the Court of Claims, to be there proceeded in according to law.

WM. W. BELKNAP,
Secretary of War.

(Record, p. 15.)

On the 9th day of January, 1874, Simeon Hart filed in the Court of Claims his petition in said cause, and in said petition he sought to recover from the United States the sum of fifty thousand three hundred and ninety-one dollars and fifty-two cents, made up of the following specific items of claim.

1st. *The sum of two thousand nine hundred and thirty-seven dollars and fifty-two cents*, for flour delivered by Simeon Hart to the United States at Fort Bliss, Texas, in March, 1861. This sum was made up of *two* vouchers made by and certified as required by Army Regulations, by Lieut. Thomas K. Jackson and Lieut. Z. R. Bliss, who were, at the time the same were signed, officers in the United States Army. The voucher certified by Lieut. Thomas K. Jackson, in favor of Simeon Hart, for *two thousand eight hundred and fifty dollars*, is dated March 3d, 1861, and is the only one of said vouchers in controversy in this suit. The vouchers for flour certified to by Lieut. Bliss, was not proved. The amount of that voucher was eighty-seven dollars and fifty-two cents. (Record, p. 1.)

2d. The sum of *three thousand three hundred and twenty five dollars and fifty cents*, embraced in a voucher certified by Lieut. Col. John B. Grayson, Commissary of Subsistence

in favor of Simeon Hart, and dated the 21st of June, 1861. (Record p. 2.)

3d. The sum of *twelve thousand, one hundred and thirty-five dollars and thirty-five cents* for corn, and corn sacks, and forage sold and delivered by Simeon Hart, and certified by Lieut. Edward Treacy, Assistant Quartermaster U. S. A. and by Lieut. Thomas K. Jackson, Assistant Quartermaster of the U. S. A. The corn and corn sacks were furnished between March 31st and April 22d, 1861, and the amount payable therefor is *eleven thousand four hundred and forty dollars and eighty-five cents.* These vouchers were certified to by Lieut. Treacy on the 19th of June, 1861. The voucher certified by Lieut. Jackson amounts to the sum of *six hundred and ninety-four dollars and fifty cents*, and is *for foraging and taking care of public animals* for the United States from November 25, 1860 to February 22, 1861. (Record pp. 3, 5, 6., 7.)

4th. The sum of *twenty thousand eight hundred and fifty-four dollars and twenty five cents*, due on lost checks, drawn on different United States Sub-Treasurers, by different United States officers, and held by Simeon Hart, between October 24, 1860 and June 9, 1861. (Record pp. 3, 7, 8, 9, 10.)

5th. The sum of *eight thousand nine hundred and fifteen dollars, for damages sustained*, in consequence of the refusal of the United States to receive 153,000 pounds of flour, which it had contracted to receive from Simeon Hart, under a contract made November 10, 1860. (Record pp. 3, 4, 5, 10, 11.)

The *fourth* and *fifth* of the above items are not involved in the determination of this appeal. The claimant had leave, in the Court of Claims, to strike them out of his pe-

tition, and withdraw them from consideration, before the case was heard in that Court. (Record pp. 18, 19.)

To this petition the defendant pleaded.

1st. The Statute of Limitations. (Record p. 13.)

To this plea the claimant filed a demurrer, which was sustained by the Court of Claims on the 7th day of May, 1874.

Record, pp. 13, 14.

2d. The defendants also, on the 14th day of July, 1874, filed a plea of set-off or counter claim to the amount of nine thousand dollars ($9,000.00), to which the claimant, on the 14th of October, 1878, filed a replication.

Recond, pp. 12, 16.

The issue made by said plea of set-off or counter claim, and the replication thereto, was, upon the hearing of this cause, found in favor of the claimant.

Finding XVIII., Record, p. 39.

3d. That on the 9th day of May, 1877, the claimant, by leave of the Court, filed an amended petition in said cause, and afterwards, on the 12th day of May, 1877, the defendant filed herein a plea of the general issue, and also a plea of the Statute of Limitations.

Record, pp. 14, 15.

II.

Findings of Fact.

The Court of Claims, on the hearing of this cause, found the following facts:

I. That on the 3d day of March, 1861, Thomas K. Jackson was, and for some time had been, a first lieutenant of infantry in the army of the United States, and acting assistant commissary of subsistence, and quartermaster at Fort Bliss, in the State of Texas.

Record, p. 27.

II. On the same 3d day of March, John B. Grayson was, and for some time before had been, a major and commissary of subsistence and brevet lieutenant colonel in the army of the United States, on duty as chief commissary of subsistence of the Department of New Mexico. He was relieved April 19, 1861, as set forth in Finding IX., and left the department on the 17th of the following June.

Record, p. 28.

III. On the same 3d day of March, Edward Treacy was a second lieutenant in the regiment of mounted riflemen in the army of the United States, and then was, and for two months previous had been, on duty as acting assistant quartermaster and acting commissary of subsistence at the post of Fort Craig, in New Mexico, and continued at such post on such duty until May 1, 1861.

Record, p. 28.

IV. On the same 3d day of March, Simeon Hart, the claimant's intestate, was residing in El Paso, Tex., and was in active sympathy with those who were inciting to rebellion. In April, 1861, he joined the insurgents, and then and afterwards furnished them with supplies, money, and means of transportation to carry on their invasion and campaign into New Mexico. On the 3d of November, 1865, the President granted to said Hart a full pardon and amnesty for all offenses committed by him arising from participation, direct or implied, in the rebellion.

Record, p. 28.

XI. That the said Simeon Hart delivered to the United States at Fort Bliss, Texas, between October 8th, 1860, and March 3d, 1861, 53,912 pounds of flour, which was all paid for by the United States at the rate of *nine and one-half cents per pound*. On the said 3d of March, 1861, the said Lieutenant Jackson delivered to said Simeon Hart a voucher for flour in the words and figures following, to wit:

The United States to Simeon Hart, Dr.

Date of Purchase.		Dollars.	Cents.
March 3, 1861.	For 30,000 lbs. flour delivered at Fort Bliss, Texas, @ 9½c.	$2,850	00
	Total, two thousand eight hundred and fifty dollars	$2,850	00

I certify that the above account is correct and just, and that the articles have been accounted for on my provision return for the month ending on the 31st of March, 1861, and that the account has not been paid by me in consequence of the want of funds.

THOMAS K. JACKSON,
1st Lt. of Inf'y, A. A. C. S.

The said voucher having been transmitted to the Commissary General of Subsistence by the said Hart, that officer on the 22nd of May, 1861, wrote to said Hart as follows:

SIR: Your account of flour delivered at Fort Bliss, Texas, has been examined at this office and transmitted to the third auditor for settlement, and the assistant treasurer of [the] United States at New Orleans has been this day requested to pay you the sum of two thousand eight hundred and fifty dollars in satisfaction of your account.

Very respectfully, &c.,

J. P. TAYLOR,
Commissary General Subsistence.

SIMEON HART, Esq., El Paso, Texas.

Subsequently, and on the 24th of May, 1861, an account was stated by the third auditor, based on the said voucher. The said account was also certified by the Second Comptroller of the Treasury on the 25th of May, 1861, and on the 28th of May a requesition was issued for the payment of said account thus certified by the Second Comptroller, but no draft or warrant was ever issued for the payment of the said account, and the records of the Treasury Department do not show that the voucher has ever been paid.

Record, pp. 32–33.

XIII. That among the papers transmitted by the Secretary of War with this case is a voucher dated June 21, 1861, and a certificate of Colonel Grayson thereon. The certificate is on a different kind of paper from the voucher, and is pasted to it, and there is no other evidence to show when this was done, or whether the voucher itself ever came under Grayson's observation. The said voucher and certificate are as follows:

The United States to Simeon Hart, Dr.

June 21st, 1861. To error in voucher No. 5, 2nd qr. 1861, being for 32,000 lbs. flour, at 12 cts. per lb., in lieu of 13 cts. per lb. for 12,100 lbs., as per contract June 28th, 1860.....	121 00
And 20½ cts. per lb., for 19,900 lbs., as per contracts of Nov. 3rd, 1860.....	1,591 50
And also error in voucher No. 9, 2nd qr. 1861, being for 17,800 lbs. flour, at 12 cts. per lb., in lieu of 20½ cts. per lb., as per contract Nov. 3rd, 1860.....	1,513 00
Making total in errors.....	3,325 50

Error on the first item, 1 ct. pr. lb.; on second and third items, 8½ cts. pr. lb.

I certify on honor that the above account is correct and just; that this flour has been faithfully issued; that I have accounted for this flour by the receipts of officers duly qualified to receive the same; that it was purchased at the prices mentiontioned and contracted for (see contract of
48 28th June and 3rd Nov., 1860), and that Judge Hart is entitled to the amount specified on the face of this account, and I have not paid this account owing to the order of the Secretary of War, through the Commissary General, of 11th May, 1861.

JOHN B. GRAYSON,
Brev't Lt. Col. & C. of S.

It does not appear in direct proof in what manner the said account or voucher came into the possession of said Hart or where the same was signed by the said Grayson; but the Court have no doubt, from the surrounding circumstances, and find as a fact, that when this voucher purports to have been issued both Grayson and Hart were within the enemy's lines. (Record, pp. 34, 35.)

XV. The said Lieutenant Jackson also issued and delivered to the said Simeon Hart, a certain other voucher in the words and figures following, to-wit:

The United States to Simeon Hart, Dr.

Nov. 25, 1860.—For foraging and taking care of 25 public animals of the Quarfermaster's Department from the 5th of November, 1860, to the 25th of November, 1860, at 75 cents per head per day, being 20 days	$375 00
Jan'y 3.—For foraging and taking care of 18 public animals of the Quartermaster's Department for 12 days, commencing 22 of December, 1860, and ending 3d of January, 1861, at 75 cents per head per day	162 00
Feb'y 22.—For foraging and taking care of 21 public animals of the Quartermaster's Department for 10 days commencing on the 13th and ending on 22d of February, 1861, at 75 cents per head per day	157 50
	$694 50

I certify that the above account is correct and just, and that the services were rendered as stated, and that they were necessary for the public service, and that the account has not been paid by me in consequence of the want of funds.

THOMAS K. JACKSON,
1st Lt. 8th Infantry, A. A. Q. M.

Record, pp. 35, 36.

XVI. That on the 19th day of June, 1861, the said Lieutenant Treacy made out, signed and certified the following vouchers, viz:

No. 12.

THE UNITED STATES TO S. HART, DR.

March 31, 1861.—For 935 fanegas of corn, at $6.50 per fanega	$6,077 50
March 31, 1861.—For 3,278 corn sacks, at 20 cts. each	655 60
	$6,733 10

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending 31st of March, 1861.

EDWARD TRACY,
2d Lieut. R. M. R., A. A. Q.

Fort Craig, N. M., June 19th, 1861.
Record, p. 37.

No. 12.

The United States to S. Hart, Dr.

April 22, 1861.—For 689½ fanega of corn, at $6.50 per fanega	$4,481 75
April 22, 1861.—1,130 corn sacks, at 25 cents each	226 00
	$4,707 75

I certify that the above account is correct and just, and that the articles have been accounted for on my property return for the quarter ending on the 30th of June, 1861.

EDWARD TREACY,
2d Lieut. R. M. R., A. A. Quartermaster.

Fort Craig, N. M., June 19, 1861.

That previous to the date of said vouchers, and before their transmissal to said Hart, the Secretary of War addressed to Col. John P. Hatch, Chief Commissary of Subsistence of the Department, and stationed at Santa Fe, New Mexico, a letter of which the following is a copy:

OFFICE COMMISSARY GENERAL OF SUBSISTENCE,
WASHINGTON, *May* 11, 1861.

CAPTAIN: The Secretary of War directs that no further payments be made to Mr. Simeon Hart, of El Paso, on account of moneys due him by the United States, and that he be instructed to forward his accounts, properly certified, to this office. You will give instructions accordingly.

Very respectfully,
your most obedient servant,

J. P. TAYLOR,
A. C. G. Sub.

Capt. John P. Hatch,
Mounted Rifles, Acting C. S., Santa Fe, N. M.
2w

The said Treacy, when this letter was received, was serving at Fort Craig, New Mexico, under command of said Hatch. On the 12th day of June, 1861, the said Treacy addressed to said Hart the following letter, which was received by said Hart within the enemies lines at El Paso, Texas, to wit:

OFFICE OF THE A. A. Q. M.,
FORT CRAIG, N. M., *June* 12th, 1861.

SIR: I herewith enclose for your information a copy of a letter received on the 6th inst. from the Acting Commissary of Subsistence of this department, relative to the settlement and payment of accounts due you by the United States.

To comply with the instructions contained in that letter, I have again to ask you to send me at your earliest convenience all my receipts for corn and sacks, and, in the event of your doing so, I shall give you a single receipt for the balance, upon which you can base an account, to which I will certify, and then by you forwarding it to the Bureau of the Quartermaster-General there will be no difficulty in obtaining a speedy settlement.

The following is an exposition of how our account now stands:

Paid.

61½ fanegas of corn, at 6.50 p'r fanega.....	$3,000 00

Unpaid.

1,624½ fanegas of corn, @ 6.50 p'r fanega	10,559 25
1,408 corn sacks, @ 20 cts. each.....	881 60
Total indebtedness	$11,440 85

I am, sir, very respectfully, your ob'd't serv't,

EDWARD TREACY,
2d Lt. R. M. R., A. A. Q. M.

Mr. Simeon Hart, &c., &c., El Paso, Texas.

The Court of Claims concluded this finding as follows:

"*It does not appear by positive proof how these vouchers reached said Hart, but as the said Hart was, at that time,*

within the enemy's lines, actively co-operating with them, the Court finds, as a fact, that they were transmitted to him by Treacy across the enemy's lines." (Record, pp. 36-37-38.)

XVII. The said Hart transmitted the said last-named vouchers to Washington, where they were presented for allowance and payment. The accounting officers disallowed them and they have never been paid.

The said Treacy in the abstract of purchases rendered with his quarterly returns of quartermaster stores for the quarters ending March 31, 1861, and June 30, 1861, returned the following articles as purchased from the said Hart:

March 14, 21,539 pounds of corn	$1,000 00
March 31, 195,517 pounds of corn, 1,130 corn sacks.....	9,733 20
April 22, 74,984 pounds of corn, 1,130 corn sacks.....	3,707 40
	$14,440 60

And in his abstract of purchases paid for, accompanying his accounts-current for the same quarters he returned the following payments to the said Hart:

March 14, 21,539 pounds corn.. ...	$1,000 00	
May 15, 43,077 pounds corn.....	2,000 00	
		3,000 00
		$14,440 60

On the foregoing facts the Court finds, as a resulting fact, that prior to the 13th of April, 1861, the said Hart sold to the defendant corn and corn sacks of the value of $10,732.20, upon which he has received from the defendant the sum of $3,000 ; and that after the 13th day of April, 1861, to wit, on the 22d day of April, 1861, he sold to the defendants corn and corn sacks of the value of $3,707.40, for which neither he nor his representatives have been paid.

Record, pp. 38, 39.

XX. That all the vouchers numbered in this suit were transmitted to the War Department by said Hart between April 27 and June 26, 1861, and were received at the War

Department between May 22d and August 11th, 1861, and they remained in the War Department unsettled until they were, without the other papers relating to this case, transmitted by the Secretary of War to this Court.

Record. p. 39.

III.

Conclusions of Law.

The Court decided as matter of law—

1st. That it had no jurisdiction to hear and determine, by virtue of a reference by the Secretary of War, under the provisions of Section 7, of the act of June 25th, 1868 (Section 1063 of the Revised Statutes), those claims or causes of action which accrued or existed prior to the 13th of April, 1861.

2d. That the vouchers certified by Lieutenant Treacy, in favor of Simeon Hart, at Fort Craig, New Mexico, on the 19th of June, 1861, and by said Treacy transmitted to said Hart at El Paso, Texas, were void, and were not even *prima facie* evidence of indebtedness, *because the transmissal of said vouchers by said Treacy to Hart was a violation of that intercourse between enemies which is prohibited by the public international law.*

3d. That the voucher certified by Lieut. Colonel Grayson, in favor of Hart, on the 21st of June, 1861, was void, *because Grayson and Hart had, at the date of said voucher, become public enemies of the United States, and the said vouchers was delivered by Grayson to Hart within the enemy's lines.*

The Court of Claims, upon these grounds, on the 16th day of May, 1881, entered a judgment dismissing the claimant's petition, from which judgment the claimant prayed an appeal to this Court, which was allowed on the 17th day of June, 1881.

Record, pp. 48–49.

IV.

Assignment of Errors.

1st. The Court of Claims erred in deciding that it had no jurisdiction to hear and determine those claims or causes of action which accrued or existed in favor of the appellant's intestate against the United States, prior to the 13th day of April, 1861.

2d. That Court erred in deciding that the two vouchers signed by Lieutenant Treacy, in favor of the appellant's intestate, for the sum of eleven thousand four hundred and forty dollars and eighty-five cents ($1,440.85), for corn and corn-sacks, sold and delivered by the claimant's intestate to the United States; and the voucher signed and delivered by Lieutenant Jackson in favor of the appellant's intestate, for the sum of six hundred and ninety-four dollars and fifty cents ($694.50), were void, because their transmissal to the appellants intestate involved a violation of the non-intercourse laws.

3d. The said Court erred in deciding that the voucher issued by Lieutenant Colonel Grayson, in favor of the claimant's intestate for the sum of three thousand three hundred and twenty-five dollars and fifty cents ($3,325.50), dated June 21st, 1861, and being for correction of errors in previous deliveries of flour sold to the United States by the appellant's intestate, was not *prima facie* evidence of the indebtedness of the United States to the appellant's intestate to the amount specified in said voucher.

4th. That Court erred in rendering a judgment dismissing the appellant's petition.

V.

Points and Authorities.

A. The authority of the Secretary of War, to transmit this cause to the Court of Claims, as provided in the Seventh Section of the Act of June 25, 1868, was not impaired or taken away by the provisions of the joint resolution approved March 2, 1867.

That part of the appellant's claim, to which the above objection is urged, is as follows:

1st. The forage voucher certified by Lieutenant Jackson	$694 50
2nd. The voucher for flour certified by Lieutenant Jackson	2,850 00
3d. The voucher for corn and corn-sacks certified to by Lieut. Treacy, dated March 31, 1861	6,733 10
	$10,277 60

The *Seventh* Section of the Act of Congress approved June 25, 1868, is as follows:

WHENEVER ANY CLAIM IS MADE AGAINST ANY EXECUTIVE DEPARTMENT, involving disputed facts or controverted questions of law, where the amount in controversy exceeds three thousand dollars, or where the decision will affect a class of cases, or furnish a precedent for the future action of an Executive Department in the adjustment of a class of cases, without regard to the amount involved in the particular case, or where any authority, right, privilege or exemption is claimed or denied under the Constitution of the United States, the head of such Department may cause such claim, with all the vouchers, papers, proofs, and documents pertaining thereto, to be transmitted to the Court of Claims, and the same shall be there proceeded in as if originally commenced by the voluntary action of the claimant.

Provided, That no case shall be referred by any head of a Department, unless it belongs to one of the several classes of cases *which, by reason of the subject matter and character*, the said Court might, under existing laws, take jurisdiction of on such voluntary action of the claimant."

15 Stats. at Large, p. 76.
Revised Statutes, Sec. 1063.

The Joint Resolution of March 2, 1867, which is assumed by the Court of Claims, to take away the authority of the "Head of an Executive Department" to refer the claims of persons who had aided the rebellion, and had been pardoned, to the Court of Claims, is as follows:

"That until otherwise ordered it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government which accrued or existed prior to the 13th day of April, A. D. 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion; or in favor of any person who, during said rebellion, was not known to be opposed thereto, and distinctly in favor of its suppression; *and no pardon heretofore granted or hereafter to be granted shall authorize the payment of such account, claim, or demand until this resolution is modified or repealed.*"

Revised Statutes, sect. 3480.
14 Stats. at Large, p. 571.

In order that there may be no misapprehension in regard to the reasoning by which the Court of Claims denied to itself jurisdiction over so much of the claimant's cause of action as existed prior to April 13th, 1861, attention is here invited to the language of that Court upon that question, which is as follows:

"The claimant asks us to find that on the 3d of November, 1865, his intestate received a full pardon, and he maintains that it operated to set aside the provisions of this act as to him and his claims. We cannot concur in this view. It seems to us that it rests upon a radical error, as to Hart's status in the Executive Departments and in this Court, after the close of the war.

"The facts stated in the claimant's request show that Hart was guilty of levying war against the United States, of adhering to their enemies, and of giving them aid and comfort within the United States." * * *

"The close of the war left Hart liable to be proceeded against for any or all these offenses against the statutes of the United States, and to be punished for each or all when convicted, and liable to the confiscation of his property. From all that liability the President's pardon of November 3, 1865, completely exempted him." * * *

But disability to receive debts due to him, whether from individuals or the United States, was not made a consequence of any offense. So far as his relations with the United States were concerned, Hart had, at the time of the receipt of his pardon, or at the time of the passage of the joint resolution of March 2, 1867, committed no offense which took away from him the right to be paid at the Treasury any sums of money due to him by the United States for which no proceedings for confiscation had been instituted. It is, therefore, clear that there was no disability of this kind for the pardon to operate on when it was granted.

Hart's disabilities did not grow out of treasonable acts for which, so far as appears, he was never indicted, but from another and quite different relation which he bore to the United States—that of a public enemy. Before the war he could make a valid contract with the Government, could fulfill that contract, and could earn the right to the compensation provided for its fulfillment. The war converted him into a public enemy irrespective of his individual acts. During its existence he could not contract with inferior Government officials, could not earn compensation on such contracts, and could not receive payment for services. When the war closed he reverted to his original status. He could contract anew with the Government, could receive pay under the new contract, and could receive pay earned under an old contract prior to the war, provided it had not been paid or confiscated. He needed no pardon to enable him to do this.

As the President's pardon conferred no increased right upon Hart to obtain pay under the old contracts, so the resolution of March 2, 1867, took nothing from him which had been conferred by the pardon. It impinged upon no function intrusted by the Constitution to the Executive. It

did not, like the legislation which was reviewed in Klein's case (13 Wall., 128), attempt to prescribe to the judiciary the effect to be given to an act of pardon or amnesty by the President. Congress simply forbade claims of this class to be paid until it should otherwise order.

* * * * * *

Congress having, in the exercise of a clear constitutional right, provided that claimants like Hart should not be paid from general appropriations for claims that accrued prior to April 13, 1861, the Executive was powerless to consider such claims. Auditing and accounting are but parts of a scheme for payment; and, in our opinion, the arrest of the object was the arrest of the means for obtaining it.

The act of 1868 was strictly auxiliary, for the purpose of assisting heads of departments in investigating and disposing of ordinary claims against the Government. It conferred on claimants no right or remedy which did not previously exist. If the resolution of 1867 deprived claimants of the right to receive pay, the subsequent act did not restore that right. On the contrary, it expressly restricted the reference of claims to the class of which the Court already had jurisdiction. It would be an abuse of construction to extend the right to specific classes of claims which Congress had carved out of the mass and reserved in terms for future legislation. Should the head of a department be in doubt (as was the case in Padelford's case, 9 Wall., 531) whether a claimant comes within the excluded class, he may refer the case to this Court. It would then become our duty to take jurisdiction; but as soon as the fact is ascertained that the claim is within the prohibition of the resolution of 1867, the Court must say that being a claim which the Executive was forbidden to pay, its reference does not confer jurisdiction to proceed with it to final judgment. With this modification, induced by the recent argument, we repeat the former expression of our views:

"That would be making the Treasury do indirectly what Congress has said it cannot do directly. Were we to render judgment in the claimant's favor on such claims we should invite the officers of the Treasury to do an act, under cover of our judgment, which Congress plainly intended that they should not have authority to do in any contingency. We are not required to determine whether we should be au-

thorized to render judgment against the Government on this class of claims if the claimant had appeared on his own motion. We confine ourselves to this: that when the head of an executive department is forbidden by law to pay a claim, there can arise no disputed fact, no controverted question of law, nothing in which our decision can affect a class of cases, nothing in which it can furnish a precedent for the future action of an executive department, nothing in which any authority, right, privilege or exemption can be claimed or denied under the Constitution of the United States, to warrant the transmission of the claim to this court, or to confer upon this court a jurisdiction, derived through the department, which is expressly denied to the department. The duty of the executive officer is to deny the claim irrespective of all such considerations. He has no power to assist the claimant to any other remedies."

In regard to the Joint Resolution of March 2, 1867, the following propositions are obvious:

1st. It made that *unlawful*, which before that time was lawful and authorized, to-wit: *The payment of a debt due from the United States to one of its creditors who had given aid and comfort to the rebellion, which debt, was incurred previous to the breaking out of the late rebellion.*

2d. It imposed a *disability* upon such creditor, and deprived him of the right to receive that which the law previously gave him the right to have. And this *disability* was imposed in contempt of the rights which resulted to the disloyal creditor, from his pardon by the President, and was imposed as a *penalty* for his disloyalty after he had been pardoned.

3d. It attempted, by *legislative enactment*, to destroy the legal effect of a pardon granted by the President.

4th. It attempted to create a new defense against the payment of a debt based upon the disloyalty of the creditor, after his pardon had taken effect.

a. It is obvious that none of these *disabilities* could be imposed *by legislative enactment* subsequent to the grant of

the pardon. They were all imposed in consequence of the assumed *disloyalty* of the creditor; but after the pardon, no offence of that character could be imputed to him, and no *disability* imposed for offences committed previous to the grant of the pardon.

Although this statute might have been effective to prohibit the Secretary of War from *paying* the claims of the appellant's intestate *previous to his pardon* by the President, yet the pardon restored his right to demand payment of his debts due from the United States; and Congress had no power to impair the effect of his pardon by prohibiting the payment of his claims. This statute attempted to create *a new defense against the payment of a debt due from the United States to a certain class of its citizens*. That defense was based upon the fact that the creditor had promoted, sustained and encouraged the late rebellion. The right of the United States to urge that defense against the payment of a debt *admitted to be due* was destroyed the very instant the creditor received from the President a pardon, which relieved him of the legal disabilities resulting from having given aid and comfort to the rebellion. The pardon was granted before the passage of the statute. The rights restored by it could not be taken away by *legislative enactment*. The admission of that power to Congress would be the concession to it of the right to exercise *judicial* and *executive*, in addition to its legislative powers. What was the status of Hart's claims subsequent to his pardon? There can be no doubt that he had a right to demand their *immediate* payment. They had not been forfeited to the United States, nor could they be, because there was no statute that authorized their confiscation. The law then provided for the settlement of his claims by the Third Auditor and Second Comptroller of the Treasury; and there was no change in that law until the passage of the statute under consideration. It was not in the power of Congress to de-

prive Hart of the legal benefits of his pardon by denying to either the Executive or Judicial Departments the right to recognize it in the determination of his rights of property. The evident purpose of this statute was to destroy the legal effect of a pardon granted by the President, and to take from the officers of the Government the power they then exercised to adjust and pay to the claimant the debt due to him from the United States. This power has been so often denied to Congress by the Supreme Court that a discussion of the question ought not now to be needed here. The leading case upon this question is that of *Ex-parte* Garland, 4 Wallace, 379, 380, where the Court used the following language:

"The Constitution provides that the President shall have 'power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.'"

"The power thus conferred is unlimited, with the exception stated. It extends to every offence known to the law, and may be exercised at any time after its commission—either before legal proceedings are taken or during their pendency, or after conviction and judgment. *This power of the President is not subject to legislative control.* CONGRESS CAN NEITHER LIMIT THE EFFECT OF HIS PARDON NOR EXCLUDE FROM ITS EXERCISE ANY CLASS OF OFFENDERS. The divine prerogative of mercy reposed in him cannot be fettered by any legislative restrictions. Such being the case, the inquiry arises as to the effect and operation of a pardon, and on this point all the authorities concur. A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; and when the pardon is full, it releases the punishment, and blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed the offence. If granted before conviction, it prevents any of the penalties and disabilities consequent upon conviction from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity. * * * The effect of this pardon

is to relieve the petitioner from all penalties and disabilities attached to the offence of treason committed against the Government. So far as that offence is concerned, he is thus placed beyond the reach of punishment of any kind. But to exclude him by reason of that offence from continuing in the enjoyment of a previously acquired right, *is to enforce a punishment for that offence, notwithstanding the pardon. It is not within the Constitutional power of Congress thus to inflict punishment beyond the reach of executive clemency.*"

Next came the case of Armstrong's Foundry, 6 Wall. 769; where it was decided that a pardon of the owner of property seized for a violation of the Act of August 6, 1861, terminated the right of the United States to contiuue the proceedings instituted for its confiscation.

The legal effect of a pardon resulting from taking the oath of amnesty, was again discussed in the case of *United States* vs. *Padelford*, 9 Wall., 531, 542, which involved the right of the United States to seize and retain to its own use the proceeds of the cotton owned by Padelford, after he had taken the oath of amnesty prescribed in the President's Proclamation of December 8th, 1863. In that case the Court said:

"Now we have already seen that when the petitioner took the prescribed oath, no right of any third party had intervened; for even if it could be admitted that a right of the Government derived from capture is an intervening right of a third person, within the meaning of the proclamation, it is certain no such right accrued to the Government until actual seizure, *which was after the pardon had taken full effect.* * * * It follows that, at the time of the seizure of the petitioner's property, he was purged of whatever offence against the laws of the United States he had committed by the acts mentioned in the findings, and relieved of any penalty he might have incurred. * * * But it has been suggested that the property was captured in fact, if not lawfully, and that the proceeds having been paid into the Treasury of the United States, the petitioner is without remedy in the Court of Claims, unless proof is

made that he gave no aid or comfort to the rebellion. The suggestion is ingenious, but we do not think it sound. *The sufficient answer to it is, that after the pardon, no offence connected with the rebellion can be imputed to him.*"

The next case in which these questions were discussed was that of the *United States* vs. *Klein*, 13 Wall., 128, 146. In that case the power of Congress to impair the legal effect of a pardon granted by the President was involved. Congress, by a proviso in the act making appropriations for the legislative, executive, and judicial expenditures of the Government, approved July 12th, 1870, had declared that the fact of a person being *pardoned* for offences growing out of participation in the rebellion, should be held conclusive evidence of the *guilt* of the person pardoned. The Court of Claims, upon proof of such pardon being made, was required to dismiss the claimant's petition; and if the case were pending by appeal in the Supreme Court, the proof of pardon was to arrest the appellate jurisdiction of the Supreme Court, and the suit should be forthwith dismissed.

The Court was of the opinion that the act was unconstitutional and void, because it attempted, by legislative enactment, to impair and destroy the effect of a pardon granted by the President. The Court, upon this question, used the following language:

"It is the intention of the Constitution that each of the great co-ordinate departments of the Government—the legislative, the executive, and the judicial—shall be, in its sphere, independent of the others. To the executive alone is entrusted the power of pardon; and it is granted without limit. Pardon includes amnesty. It blots out the offense pardoned, and removes all its penal consequences. It may be granted on conditions. In these particular pardons, that no doubt might exist as to their character, restoration of property was expressly pledged, and the pardon was granted on condition that the person who

availed himself of it should take and keep a prescribed oath.

"*Now, it is clear that the legislature cannot change the effect of such a pardon any more than the executive can change a law;* yet this is attempted by the provision under consideration. The Court is required to receive special pardons as evidence of guilt, and to treat them as null and void. It is required to disregard pardons granted upon conditions, though the conditions have been fulfilled, and to deny them their legal effect. This certainly impairs the executive authority, and directs the Court to be instrumental to that end."

13 Wallace, 147, 148.

The result of all these authorities is, and must be, the establishment of the proposition that the legal effect of a pardon granted by the President is beyond the reach of legislative action, and can in no manner be impaired by its interference. It is idle to say that the prohibitions of this statute were only to operate upon the *remedy*, and were only intended to prohibit action by executive officers, where the disloyalty of the creditor was established, although he produced his pardon as evidence that any disability resulting from his having aided the rebellion had been removed. It will be conceded, that if proceedings to confiscate and forfeit this debt to the United States, in consequence of the disloyalty of the claimant, had been authorized by statute, and such proceedings had been instituted, and were pending *previous* to the pardon, that such suit must terminate on proof of the pardon. It is equally clear, that the right of either the executive or judicial departments of the government, to urge, as a defence against the payment of a debt due from the United States, the disloyalty of the creditor would terminate upon his proving the fact that he had been pardoned for all offences resulting from his participation in the rebellion.

Again, when this indebtedness accrued, it was an incident of the contract that Hart would have a right to have his

demands against the United States, for property furnished to it, paid by some one of the following methods of procedure: 1st. By receiving pay from the officer by whom the property was received on behalf of the United States. 2nd. By examination and settlement by the Third Auditor and Second Comptroller of the Treasury.

The statute we are discussing attempted to deprive the appellant's intestate of these remedies, because of the fact that he had aided and encouraged the rebellion. It was passed subsequent to the grant of the pardon, by which all offences, resulting from his giving aid and comfort to the rebellion had been blotted out, and the penal consequences thereof removed. It is not believed that Congress had the power to direct the Executive officers of the government to ignore and set aside the legal effect of this pardon, any more than it could direct the Judiciary to make it proof of guilt rather than evidence that the person to whom it was issued, was relieved from all penalties resulting from participation in the rebellion. It is impossible to believe or concede, therefore, that the right of the Executive officers of the government to adjust, settle and pay the debts due from the United States to persons pardoned for offences connected with the rebellion, was, in any respect, impaired or taken away by the joint resolution of March 2d, 1867.

This statute, therefore, is just as obnoxious as that which this Court denounced in *Klein* vs. *The United States*, 13 Wall., 128. In that case, the purpose of the statute was to direct the *Judiciary* to ignore the legal effect of a pardon, which the President had granted, while the statute now under consideration directs the Executive Departments to ignore and nullify all such pardons.

b. If it be true, as claimed by the Court of Claims, that the act of March 2, 1867, intended to cut off all jurisdiction in the Executive Departments *to settle and pay*, and all jurisdiction in the courts to *adjudicate* this claim, then the

act was unconstitutional, as attempting to destroy all remedy for the enforcement of a contract, upon which the claimant had, at the date of said act, a right of recovery under then existing laws. If, when the contract is made, the party has a remedy secured by law, *such existing remedy* so far becomes a part of his contract rights, as that the legislature may not lawfully destroy and take away *all* remedy, although it may rightfully change the remedy.

Cooley's Constitutional Limitations, p. 289 and authorities cited in note 4;
Bronson vs. *Kinzie*, 1 Howard, 311;
Green vs. *Biddle*, 8 Wheaton, 1.

In *Bronson* vs. *Kinzie*, Mr. Chief Justice TANEY, speaking for the Court, says:

"Whatever belongs merely to the remedy may be altered according to the will of the State, provided the alteration does not impair the obligation of a contract. *But if that effect is produced*, it is immaterial whether it is done by acting on the *remedy*, or directly on the contract. *In either case it is prohibited by the Constitution.*"

Again, he says:

"And no one, we presume, would say that there is any substantial difference between a retrospective law, declaring a particular contract, *or class of contracts*, to be abrogated and void, and *one which took away all remedy to enforce them*, or incumbered it with conditions that render it useless or impracticable to pursue it."

In *Ex parte* Garland, 4 Wall., 379, 380, the Supreme Court declared that the prohibition containing in the constitution by which any STATE was deprived of any power to pass "any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts," was as applicable to CONGRESS, as to the legislature of a STATE.

In that case the court said:

"The legislature may undoubtedly prescribe qualifica-

tions for the office to which he must conform, as it may, where it has exclusive jurisdiction, prescribe qualifications for the pursuit of any of the ordinary avocations of life. The question in this case is not as to the power of Congress to prescribe qualifications, but whether that power has been exercised as a means for the infliction of punishment, against the prohibition of the constitution. That this result cannot be effected indirectly by a State under the form of creating qualifications, we have held in the case of *Cummings* v. *The State of Missouri*, AND THE REASONING BY WHICH THAT CONCLUSION WAS REACHED APPLIES EQUALLY TO SIMILAR ACTION ON THE PART OF CONGRESS."

In the Sinking Fund Cases, 99 U. S., 718–19, Chief Justice WAITE, delivering the opinion of the court, said:

"The United States cannot, any more than a State, interfere with private rights, except for legitimate governmental purposes. They are not included within the constitutional prohibition which prevents States from passing laws impairing the obligation of contracts, but equally with the States, they are prohibited from depriving persons or corporations of property without due process of law. They cannot legislate back to themselves, without making compensation, the lands they have given this corporation to aid in the construction of its railroad. Neither can they, by legislation, compel the corporation to discharge its obligations in respect to the subsidy bonds, otherwise than according to the terms of the contract already made in that connection. The United States are as much bound by their contracts as are individuals. If they repudiate their obligations, it is as much repudiation, with all the wrong and reproach that term implies, as it would be if the repudiator had been a State or a municipality or a citizen. No change can be made in the title created by the grant of the lands, or in the contract for the subsidy bonds, without the consent of the corporation. All this is indisputable."

c. If, however, the Court shall dissent from these conclusions, and shall hold that this joint resolution was not void for the reasons heretofore submitted, then it is urged

that, under the provisions of Section 236 of the Revised Statutes, there *was* authority in the proper accounting officers of the Treasury Department to examine, determine, adjust, and settle the claims of Hart, notwithstanding the prohibition of the act of March 2, 1867. It is clear that the claims of Hart were within the jurisdiction of the appropriate accounting officers of the Treasury Department. The above section of the Revised Statutes settles the question too clearly for argument in the following language:

"*All claims and demands* whatever, by the United States or *against* them, and *all accounts* whatever in which the United States are concerned, either as *debtors* or creditors, shall be settled and adjusted in the Department of the Treasury."

This language, beyond all question, conferred upon the accounting officers of the Treasury—in this case the *Third* Auditor and Second Comptroller—complete *jurisdiction* over the claims of the appellant's intestate, unless it was repealed by the Joint Resolution of March 2, 1867. The character of the decision which might be rendered by the *accounting officers*, upon an examination of the claims, is quite another and different question than *the exercise of jurisdiction*. This distinction is well stated in the case of *Grignon's Lessee* vs. *Astor* (2 Howard, 338), where this Court used the following language:

"The power to hear and determine a cause is *jurisdiction;* it is *coram judice*, whenever a case is presented which brings this power into action; if the petitioner presents such a case in his petition that on a demurrer the Court would render a judgment in his favor, it is an undoubted case of jurisdiction. *Any* movement by a court is necessarily the exercise of jurisdiction; so to exercise any judicial power over the subject-matter and the parties, the question is whether on the case before the Court their action is judicial or extra-judicial, with or without the

authority of law to render a judgment or decree upon the rights of the litigant parties. If the law confers the power to render a judgment or decree, *then the Court has jurisdiction;* what shall be adjudged or decreed between the parties, and with which is the right of the case, *is judicial action*, by hearing and determining it."

Kendall vs. *United States*, 12 Peters, 623;
Rhode Island vs. *Massachusetts*, 12 Ibid., 718.

As applied to the case under consideration, if the accounting officers of the Treasury had, under Section 236 of the Revised Statutes, or under other statutes conferring their jurisdiction, power to enter upon the investigation of the claims of appellant's intestate, to ascertain and determine, by an examination of evidence—

1st. Whether Hart delivered the goods under a valid contract;

2d. Whether there was proof of the quantity and value or price to be paid for the goods delivered.

3d. Whether the property furnished to the United States had been paid for?

4th. Whether the account, claim or demand accrued or eqisted prior to the 13th day of April, 1861.

5th. Whether the account, claim or demand had been assigned, or contracted to be assigned prior to April 1, 1861, to creditors of Hart, loyal citizens, of loyal States, in payment of debts incurred prior to March 1, 1861.

6th. Whether Hart promoted, encouraged or in any manner sustained the late rebellion?

Then the power to examine and decide these questions was the exercise of *jurisdiction;* and the question whether the Joint Resolution of March 2, 1867, made a defence against the *payment* of the claims of Hart, was also a question to be decided by the accounting officers in the exercise of their jurisdiction to hear, determine, adjust and settle.

If, then, the said accounting officers of the Treasury might have exercised *jurisdiction* over Hart's claims for these purposes then it follows, from the language of the act of June 25th, 1868, that the Secretary of the Treasury might, upon the certificate of any Auditor or Comptroller of the Treasury, have directed the claim, with all the vouchers, papers, documents *and proofs* pertaining thereto to the Court of Claims, "*for trial and adjudication.*"

The claims of Hart had been submitted to the accounting officers of the Treasury Department for allowance and settlement, and *partially paid*, (Finding VIII., Record, pp. 30, 31) and unless the Joint Resolution of March 2, 1867, took away the jurisdiction of the accounting officers, in such cases, for any and every purpose, then the same accounting officers who examined the claims of Hart sufficiently to justify the payment of a part of them might, with the assent of the Secretary of the Treasury, have certified those which they did not settle to the Court of Claims, "*for trial and adjudication.*"

The infirmity of the argument of the Court of Claims, npon this question is, that it assumes, that the accounting officers were "*powerles, to consider*" said claims for any purpose. The Court reached this conclusion by a statement of the following proposition: "*Auditing* and *accounting* are but parts of a scheme for payment; and, in our opinion the arrest of the object, was the arrest of the means of obtaining it." The obvious answer to this contention is, that the object and purpose of the said Resolution was not to arrest the jurisdiction of the accounting officers of the Treasury so far as their right to *examine* claims and demands against the United States was concerned, but to terminate that authority only upon proof that the person whose claim or demand was under investigation, was shown to have promoted, encouraged or in any manner sustained the late rebellion. The determination of that question was the exercise of *juris-*

diction. The right to *allow and certify for payment* is an entirely different question; and *that* depended upon the determination of the question, as to whether the person whose claim was being examined had "promoted, encouraged or in any manner sustained the late rebellion." If that question was decided adversely to the claimant, then the jurisdiction of the accounting officers ceased, unless those officers could, in the exercise of their authority to examine and determine the claim, were justified in destroying the legal effect of a pardon granted by the President, and which pardon relieved the claimant of the disabilities resulting from his having "promoted or encouraged the late rebellion." It is clear, therefore, that this statute imposed no limitation upon the accounting officers of the Treasury Department. If such had been its purpose, it would have declared that "it shall be unlawful for any officer to examine, adjust, settle or allow any account, claim or demand such as are described in the provisions of said statute. These would have been appropriate words, by which to deprive the accounting officers of the Treasury Department, of any jurisdiction over such accounts or claims, as well as any authority to allow and certify them for payment.

d. Again, this statute, even if it was in force when this case was transmitted to the Court of Claims by the Secretary of War, was intended to include within its provisions, only those *disbursing* officers of the United States who had authority to *pay* accounts, claims or demands against the United States, without the intervention of the accounting officers of the Treasury Department. The disbursing officers of the army could, previous to the passage of this Joint Resolution, pay any voucher legally certified, which belonged to that branch of the military service, of which they were the proper disbursing officers. Such vouchers were like bank checks, and could be paid by any officer to whom they were presented if the indebtedness was such as came

within the jurisdiction of the officer to whom they were presented for payment. It may be assumed that there were many such vouchers, claims, and demands issued by officers who had a legal right both to issue and pay them, and that they were outstanding at the time this Joint Resolution was passed. It was the object of that Resolution to prevent their payment, unless the persons to whom they had been issued were known to have been loyal to the United States during the late rebellion. That was the mischief against which that resolution was directed, and its peculiar language cannot be held to embrace within its prohibition any other class of officers.

The Secretary of War has not, in the first instance, nor at any time, any authority to examine, adjust, settle, or *pay* any account, claim, or demand against the United States, growing out of any indebtedness contracted for the military service. If for any cause an account, claim, or demand against the United States for any property furnished to the military service is not paid by a disbursing officer, then it can only be paid after an adjustment and settlement by the Third Auditor and Second Comptroller of the Treasury; and, even after such adjustment and settlement, the head of that Executive Department, in which the account, claim, or demand, originated does not "pay" it, because if the account, claim, or demand relates to the military service, and is not such as may be paid by the regular disbursing officers of the military service, it must still be paid at the Treasury Department. It could not, either before or subsequent to the passage of the act of 1867, be *paid* by the Secretary of War.

e. The *seventh* section, Act of June 25th, 1868, contained no *limitation* upon the power of the head of an Executive Department to transmit a case to the Court of Claims, except that which is contained in the *proviso* at the end of that section, which limits the exercise of the power to those

cases of which that Court, at that time or subsequently acquired jurisdiction. If the claim transmitted to the Court of Claims, under the provisions of that act was founded upon any contract, expressed or implied, with the United States, or upon any regulation of an Executive Department or upon any act of Congress, its transmissal here, by the head of an Executive Department, gives the Court the same jurisdiction of the case, and the same power to hear and determine it, as if instituted there by the voluntary action of the claimant. Even the Statute of Limitations could not be successfully pleaded in such a case if the claim had been filed in, or presented to that Executive Department in which it originated within six years after the indebtedness accrued.

United States vs. *Lippett*, 100 U. S., R 663.

f. The Act of June 25th, 1868, declares: "THAT WHENEVER ANY CLAIM is made against an Executive Department," which involves in its decision any such controversies, or questions as are specified in said *seventh* section, then "IT SHALL BE LAWFUL," for the head of such department to transmit the claim, if it involves disputed facts, or controverted questions of law, and exceeded in amount the sum of three thousand dollars, to the Court of Claims.

The Act of March 2d, 1867, nowhere prohibits either the *presentation* or the *examination* of such claims as are described in it. It only prohibits their payment.

Let it be supposed that the claim of a person, who is charged with giving aid and comfort to the rebellion, is under examination in the appropriate department, and he disputes and denies the evidence by which the fact of his disloyalty is established, then there would arise, and the settlement and payment of the account or claim would involve disputed facts, such as are contemplated in the Act

of June 25th, 1868. Again, let it be supposed that the claimant had given aid and comfort to the rebellion as defined in the Joint Resolution, but had been pardoned for that offence by the President, before the passage of that resolution, and the officer to whom the account or claim was presented, or before whom it might be pending for examination and settlement, refuses to recognize the pardon, or give any legal effect to it in determining the claimant's rights in the settlement of his claim. It is clear that there would then arise a "*controverted question of law*" of the very gravest character, for the legal effect of a pardon granted by the President, involves the consideration of constitutional questions, that are not appropriately remitted, either to the disbursing officers of the army, or to the accounting officers of the Treasury. That is the controverted question of *law*, so far as the accounting officers are concerned, that this case is presented to the Court of Claims for decision; for in the evidence transmitted to this Court, by the Secretary of War, is a certified copy of the pardon issued by the President to Simeon Hart, on the 3d day of November, 1865. The right to have and enjoy the legal benefits of this pardon is "a right claimed under the Constitution of the United States," within the meaning of this statute, and is, therefore, for that reason, within the specified class of cases, which, under the Act of 1868, might be transmitted by the head of any Executive Department to this Court.

The Court of Claims, in reply to this suggestion said:

"The claim is transmitted here under a different and distinct provision of the Act, as a claim involving disputed facts and *controverted questions of law*, in which the amount in controversy exceeds $3,000. No *constitutional* question was suggested in the Secretary's letter. We cannot travel beyond the Secretary's letter in order to ascertain whether another reason existed which might have justified him in

transmitting the case here. And if we could, we are all of the opinion that our jurisdiction ceases when we ascertain that a law enacted within the constitutional power of Congress forbids payment of the claim by the Executive transmitting it."

The Court of Claims was informed by the Secretary of War, in the letter which transmitted the case to that Court, that the case involved the decision of "*controverted questions of law.*" What right had the Court of Claims to assume that the validity and legal effect of a pardon granted by the President, was not one of those "controverted questions of law." The contention of the appellant's intestate, then as now, was that he could not legally have imposed upon him any legal *disabilities*, which resulted from his participation in the rebellion, after he had received from the President a pardon for all offenses resulting from having given aid and comfort to the rebellion. He, then as now, denied the legal right of the United States to *confiscate* the debt which was due to him from the United States, without judicial proceedings instituted for that purpose, *after he had been pardoned for every offense from which the right of confiscation of any kind might have been asserted against him.* Surely here was "a controverted question of law" of sufficient dignity to be worthy of the thoughtful consideration of even the Court of Claims. That Court declined to decide it, however, because the Secretary of War had not invited it to the consideration of any *constitutional* question.

g. The Court of Claims had *jurisdiction* of the claims which the appellant's intestate asserted against the United States, at the time they were transmitted to that Court by the Secretary of War. They resulted from the performance of *contracts* with the United States, and sought to recover the amounts due from the United States upon the fulfillment of said contracts. The right to be paid the amounts due,

under said *contracts*, could have been asserted in the Court of Claims subsequent to the pardon of the appellant's intestate, without proof that he gave no aid nor comfort to the late rebellion, because the proof of pardon was a substitute for the proof of that fact; and after the pardon no wrong, in connection with the late rebellion, could be imputed to him. The *debt* which the United States owed to the appellant's intestate was not confiscated, nor was it the subject of confiscation. The "*subject matter and character*" of the claims which the appellant's intestate had against the United States were such as the Court of Claims could hear and determine as soon as the rebellion was at an end, and the disabilities of Hart removed by his pardon. The right to demand payment of these debts was not lost to Hart, either by the existence of the rebellion, or by his participation in it. The *suspension* of the right to demand payment in consequence of the existence of the rebellion, did not operate as a discharge of the debt. The right of Hart to demand payment of his debt from the United States, was restored and became complete when the rebellion was officially declared at an end, and he was no longer in the attitude of a public enemy.

United States vs. *Padelford*, 9 Wall., 56.
Armstrong vs. *United States*, 13 *Ibid.*, 154.
Pargoud vs. *Same*, 13 *Ibid.*, 156.
United States vs. *Klein*, 13 *Ibid.*, 128, 136.
Carlisle vs. *United States*, 16 *Ibid.*, 152, 153.
The Protector vs. *United States*, 12 *Ibid.*, 700.
Wheaton's International Law, 536 to 541.
Halleck's International Law, 366, sec. 18.

h. The *seventh* section of the Act of June 25th, 1868, was applicable to *all claims* or cases, which had been pre-

sented to, or were pending before any of the Executive Departments at the time of its passage.

United States vs. *Lippett*, 100 U. S., 663.

In that case this Court used the following language:

"When this claim was presented to the War Department for settlement, there was no statute allowing the heads of Executive Departments, to refer claims to the Court of Claims for adjudication. *But when the Act of June 25, 1868, was passed, its provisions necessarily applied to all claims then before the Executive Departments, which belonged to one of the several classes, of which, by reason of their subject-matter and character, the Court of Claims could take cognizance upon the voluntary petition of the claimant.*" 100 U. S. R., 667.

The above language conclusively sustains the contention of the appellant in regard to the intent and meaning of the act of June 25th, 1868. It applied to *all cases*, in respect to which the claimant might, on his own motion, invoke the jurisdiction of the Court of Claims. This case was of that character. It was pending in the War Department at the time of the passage of the act. It had been rejected by the accounting officers of the Treasury, mainly upon the ground that it was within the prohibitions of the act of March 2, 1867; and that in regard to those items which were *apparently* outside of that statute, the evidence did not clearly show *the exact time* when the deliveries of the supplies furnished by Hart were made, whether before or subsequent to the 15th of April, 1861.

i. Even if the act of March 2, 1867, did make the fact of disloyalty by a claimant to oust all jurisdiction in any Executive officer, prior to the passage of the act of June 25th, 1868, then the *seventh* section of said act repeals the act of March 2, 1867, in that respect, because the act of 1868, in clear and unambiguous words, authorizes the head of any

Executive Department to transmit *all claims* of which the Court of Claims might take jurisdiction on the voluntary petition of the claimant. So, that, if the act of 1867, prohibited *payment* to disloyal claimants, the act of 1868 declared that *whenever* any case involving "disputed facts or controverted questions of law, and the amount in controversy exceeds $3,000" is pending, it shall be lawful for the Head of the Department, wherein such claim is pending, to transmit the same to the Court of Claims. If these two statutes cannot stand and be construed together, it is the act of 1867, which must be set aside. The construction which the Court of Claims put upon the act of 1867, made it repeal the *seventh* section of the act of 1868, instead of that section of *that act* repealing the act of 1867, as must logically result, if the two statutes are not so harmonious as to stand together.

The *Seventh* Section of the Act of June 25, 1868, was intended for the benefit of the United States. It enabled the Executive Departments to secure to the United States a judicial determination of all cases where there were disputed facts or "controverted questions of law." The head of the Department is the *actor*, and he acts on behalf of the United States; and such cases are transmitted to the Court of Claims for the benefit and advantage of the United States.

It is not believed that the benign purposes of this statute, will be held to be destroyed by the terms of a statute passed more than a year previous to the date of that act which secures these advantages to the United States, and which was passed for another purpose, and to provide for a class of cases which were assumed to be without judicial sanction. There is no foundation therefore for that conclusion of the Court of Claims, which denied to it jurisdiction of so much of the appellant's cause of action as accrued, or existed prior to the 13th of April 1861,

B. The vouchers signed by Lieutenant Treacy in favor of the appellant's intestate, dated June 19th, 1861, for the sum of $11,440.60, and transmitted by said Lieutenant Treacy, from Fort Craig, New Mexico, to the appellant's intestate at El Paso, Texas, were not void, because their transmissal involved a violation of that rule of public international law which prohibits intercourse between enemies.

The Court of Claims, in deciding upon the question of the validity of these vouchers, used the following language:

There are fatal objections in law to the claimant's recovery on the forage vouchers. They are three in number; one from Jackson and two from Treacy, who was stationed at Fort Craig as assistant quartermaster. Jackson's voucher and one of Treacy's vouchers were for goods alleged to have been delivered prior to April 13, 1861. No recovery can be had on these.

Treacy's second voucher was for corn delivered after April 13. At the former trial it was found that the only proof of delivery of the corn was the voucher. The voucher was transmitted by Treacy to Hart across the enemy's lines. We held it to be absolutely void, and that there was no proof of the alleged delivery. The claimant has supplied other proof, and it is now found as a fact that the corn was delivered. It only remains to consider whether Treacy could lawfully trade across the lines on the 22d April, 1861.

On that day there existed in Texas not only the technical state of war resulting from the President's proclamation, but an actual state of conflict. The effect of this upon private rights in the early stages of the rebellion has been the subject of frequent discusion in the Supreme Court. From the many cases we deduce these general conclusions. The theoretical rule which converts all inhabitants of enemy's country into enemies on the outbreak of a war, which ends business relations, dissolves partnerships, stops trade, and intercourse, and makes *unlicensed dealings* illegal, is inflexible. *This transaction was wholly outside of the operation of a pardon. It was illegal from the out set, and never constituted the foundation for a claim against the United States.*"

Record, pp. 47, 48.

It is unfortunate for the Court of Claims, that it gave so little consideration to the case of *Matthews* vs. *McStea*, 91 U. S., 7, 12, where this very question was under consideration. In that case, the question arose, as to whether a bill of exchange, drawn by a firm in New Orleans on the 23d of April, 1861, on a firm in New York, was unlawful, because it involved commercial intercourse between enemies. This Court, in deciding that question, considered it first, as being prohibited by that rule of the public international law, which makes unlawful all commercial intercourse between enemies; and second, as to the effect of the Act of July 13th, 1861, as a relaxation by Congress of that rule; and upon those questions the Court used the following language:

"It being then settled that war may exist, and yet that trading with the enemy or commercial intercourse may be allowable, we are brought to inquire whether such intercourse was allowed between the loyal citizens of the United States and the citizens of Louisiana until the 23d of April, 1861, when the acceptance was made, upon which this suit was brought. And in determining this, the character of the war, and the manner in which it commenced ought not to be overlooked. No declaration of war was ever made. The President recognized its existence by proclaiming a blockade on the 19th of April; *and it then became his duty as well as his right to direct how it should be carried on.*"

After considering the language and purposes of the proclamations of April 15th and 19th, 1861, the Court said:

"The only interference with the business relations of citizens in all parts of the country contemplated by the proclamation seems to have been such as the blockade might cause. *And that it was understood to be an assent by the Executive to continued business intercourse may be inferred from the subsequent action of the Government in*

continuing the mail service in Louisiana and the other insurrectionary States long after the blockade was declared.

"If it was not such an assent or permission, it was well fitted to deceive the public"

The Court, considering the effect of the Act of July 13, 1861, and the proclamation of the President issued under the authority of said act, on the 16th of August, 1861, used the following language:

"Both the act and the proclamation exhibit a clear implication that, *before* the *first* was enacted and the *second* was issued, *commercial intercourse was not unlawful; that it had been permitted.* What need of declaring it should cease, if it had ceased, or had been unlawful before. The enactment that it should not be permitted *after* a day then in the future, must be considered *an implied affirmation that it was lawful;* and certainly Congress had authority to relax any of the ordinary rules of war."

The intercourse between Lieut. Treacy and the appellant's intestate, which the Court of Claims denounce as unlawful, was not only *permitted*, but it was ordered in the letter of the Commissary General of Subsistence of the 11th of May, 1861. That letter was written by order of the Secretary of War. It was, in contemplation of law, the act of the President. If intercourse between those officers of the United States, stationed in New Mexico, and Simeon Hart, being within the enemy's lines, in Texas, would, at that time, have been unlawful, then this letter must be treated as a *license*, issued by Executive authority, which permitted Lieutenant Treacy and Hart to have such communication with each other as would effect the purposes designed to be accomplished by the order of the Secretary of War. What was this transaction which was thus authorized by the Secretary of War? It was an order to perpetuate in apt time the evidence of a debt which the United States owed to one of its creditors, and the creditor was instructed "to forward his accounts properly certified to this office."

This creditor had been a contractor to furnish commissary's and quartermaster's stores at different places in New Mexico for a long time previous to the war. He had contracts with the United States during the year 1860. He had made large deliveries upon those contracts for which he had not been fully paid by the United States. The rebellion breaking out, he connected himself with it. The knowledge of that fact reaches the officials at the War Department in Washington, and thereupon an order is issued to all officers of the United States to make no further payments to this creditor on account of the indebtedness of the United States to him, but his accounts are directed to be made up, properly certified, and forwarded to Washington. He was informed of this order, and those officers with whom he had previously had dealings on Government account were also instructed as to its mandate.

Every act included in the making out of the vouchers, certified by Lieut. Treacy at Fort Craig, New Mexico, June, 19th, 1861, for $11,440.85, was done under the authority and express direction of the Secretary of War, as expressed in the letter of May 11th, 1861; so, also, was the act of certifying thereto; so, also, was the transmission of the same by the said officers to Hart, in order that the same might be transmitted to the War Department; and so, also, was the forwarding of the said vouchers by Hart to that Department. To say of such vouchers, so created and transmitted to the proper department of the government, under its express orders, that they are either *void* or wanting in their efficacy of legal proof, by reason of any principle of international or non-intercourse law is, we submit, unsound, and strips the government of all power or control over its own officers.

It is appropriate to inquire, in this connection, if Lieut. Treacy would have been liable to punishment under the laws

of war, for holding official intercourse with the enemy when he was acting under the express orders of the Secretary of War? Is the United States to be permitted to deny the validity of these vouchers, merely because Hart received them from those officers of the United States who had been ordered to make them out and deliver them to him, in order that he, upon their receipt, might, in pursuance of orders, transmit them to Washington? Is Hart to have his evidence of indebtedness declared void, and his debt admitted to be due and unpaid, *confiscated* because, acting under instructions from the Secretary of War, he received his vouchers from those officers who had exclusive authority to make them out and deliver them, and subsequently, by the same instructions, forwarded them to Washington? These are some of the consequences that would result from admitting the correctness of the legal proposition upon which the court declared these vouchers void. We have not included in this discussion the voucher certified by Lieut. Jackson, because the Court of Claims did not, in any of its "findings of fact," state that the voucher for $694.50, which was the only voucher shown by the record to have been issued by him to Hart for an indebtedness resulting from "*foraging and taking care of public animals.*" This indebtedness accrued between November 25th, 1860, and February 22d, 1861, and in the absence of proof as to when it was certified and delivered to Hart, it is fair to presume that it was within a reasonable time after the indebtedness accrued. Finding XV., which relates to this voucher, contains no statement upon this subject. It is only in the *opinion* of the Court that the statement is made that this voucher is obnoxious to the same objection as that which the Court below urged against the vouchers certified by Lieut. Treacy.

It is submitted, therefore, upon this branch of the case as follows:

1st. That there was no prohibition of intercourse between the loyal and disloyal States during the late rebellion, until the issuance of the President's proclamation of non-intercourse, dated August 16, 1861.

2d. That the intercourse between Lieut. Treacy and Hart, which resulted in the delivery of the vouchers in controversy, was not unlawful, because it was inspired, conducted and carried on by the sanction, authority and direction of the Executive branch of the Government.

3d. That the said vouchers were admissible as evidence to establish that part of the appellant's case, and justified an allowance of the sum of *eleven thousand four hundred and forty dollars and eighty-five cents.*

C. The vouchers certified by Lieut. Col. Grayson, Lieut. Jackson, and Lieut. Treacy, and offered in evidence by the appellant, are sufficient evidence to establish a prima facie case in his behalf, and to entitle him to a judgment, unless the case made out by these vouchers is overcome by competent evidence.

The vouchers signed by these officers were as follows:

1. By Col. Grayson for	$ 3,325 50
2. By Lieut. Jackson for	3,544 50
3. By Lieut. Treacy for	11,440 85
	$18,310 85

At the time those officers certified to the said vouchers they were commissioned military officers of the United States, and their certificates were within the scope of their official duty. They each certified to the facts that came within their official jurisdiction and knowledge. At the time the certificates were made no other officer could certify to the fact shown in the said vouchers, because each of them were the authorized officer at the places where the facts

transpired, having knowledge of the facts which were contained in the certificates that they respectively signed. It is not claimed that the vouchers certified by these officers are such conclusive evidence as precludes the United States from showing that they were not genuine, or that the officer issuing them had issued them fraudulently, and that the facts stated in the vouchers were not, for that reason, to be taken as true.

It is not doubted, either, that the United States may always contradict the facts stated in the voucher, but the contradiction must be from evidence, and not the result of conjecture or suspicion. A *prima facie* case must stand until overcome by competent evidence.

In the case of *Solomon* vs. *United States*, 19 Wall., 17, 19, this Court gave expression to its conclusions in regard to the legal force and effect of vouchers certified by military officers for supplies which such officers had the right to purchase. In that case the Court considered the question of the liability of the United States to pay for corn which had been delivered by the contractor and accepted by the officer *after* the time for delivery, under the contract, had expired. The United States used a part of the corn thus delivered, and permitted the balance to become injured and lost. It refused to pay for that which had been lost subsequent to the delivery. A voucher for the whole quantity delivered had been issued to the contractor by the officer who had received the corn on behalf of the United States. Mr. Justice Miller, discussing the legal effect of this voucher *as evidence*, used the following language:

"The Act of 1862, requiring contracts for military supplies to be in writing, is not infringed by the proper officer having charge of such matter, accepting delivery of such supplies, after the day stipulated, nor is a verbal agreement to extend the time of performance invalid. And if this were not so, when a quarter-master in charge receives of a

person corn for the Government, gives a receipt and voucher for the amount and the price, and the Government uses such part of it as it wants, and suffers the remainder to decay by exposure and neglect, *there is an implied contract to pay the value of such corn, which value, may, in the absence of other testimony, be presumed to be the price fixed in the voucher by the quarter-master.*"

In regard to the voucher certified by Colonel Grayson for $3,325.50, and dated June 21st, 1861—the court say that there are suspicious circumstances connected with it; that the *certificate* of Grayson is pasted on to the account that it was made when Grayson and Hart were both within the enemies lines, and is open to other grave suspicions.

It is to be observed in considering the objection that the court urged against the validity of this voucher, that it must have been made out and signed by Col. Grayson at the same time that another voucher, signed by the same officer, was issued to Hart for the sum of thirty thousand seven hundred and seventy-eight dollars and eighteen cents ($30,778.17.)—Finding VIII—That voucher, and the one that the Court of Claims find surrounded with circumstances of so much suspicion, as stated in finding VIII, were transmitted to the Commissary General at Washington, D. C., on the 26th day of June, 1861, and were received at the War Department, August 11, 1861, and they there remained until they were transmitted to the Treasury Department for a settlement thereof. The voucher for the sum last above mentioned was made the basis of a settlement in favor of the assignees of Hart on the 6th day of January, 1873.

It has never been urged until now that there were any circumstances of suspicion attached to either of these vouchers. The certificates to them are in *totidem verbis*. The official character and signature of the officer by whom they were signed is not either doubted or denied.

The voucher set out in find VIII, results from the offic-

ial act of Col. Grayson, just as the voucher set out in finding XIII, results from those acts. The same circumstances of suspicion attached to the first voucher as to the last. They were both made up and signed by Col. Grayson after he had been relieved by Col. Hatch, *subsequent* to the order of the Secretary of War, communicated to Col. Hatch on the 11th of May, 1861, and yet this court in the case of *McKnight* vs. *United States*, 98 U. S. R., 179, 185, said of that voucher so signed and certified by Col. Grayson as follows:

"The claim of the United States cannot be sustained. According to the settled usages and practice of the Department, the evidence in the record was sufficient to warrant the allowance of the amount found due to Hart. Lieut. Col. Grayson, as a commissary of subsistence, was charged with the duty of receiving and inspecting the articles delivered, and of certifying the quantities and the prices to be paid. The voucher which he gave is explicit upon these points, and presupposes full knowledge on his part of what is set forth. His fidelity in the discharge of this duty was secured by his honor as a soldier, his commission, and his bond. *It does not appear that any fraud was ever suspected, or that there is the slightest ground for such an imputation.*"

In this case, there is just as little suspicion for fraud as there was in that. The only facts which the Court discover as badges of fraud are, that Grayson, Jackson, and Hart each joined the Confederate forces and gave aid to the late rebellion.

It was not shown in the Court of Claims, nor is there any finding of fact from which the conclusion can be drawn, that these vouchers, or either of them, were fraudulent and untrue. All that is said to their discredit is—

1st. That Grayson's voucher was made within the enemy's lines, while he was still an officer of the United States army, but had been superseded in his command by Col. Hatch.

2d. That Jackson's vouchers are to be discredited be-

cause he and the appellant's intestate joined the rebellion about the 1st of April, 1861.

3d. That Lieut. Treacy's vouchers are void because they were sent across the enemy's lines by a Union officer to a former Government contractor who had joined the rebellion.

It never occurred to those officers of the War Department, whose exclusive duty it was to examine and report to the accounting officers of the Treasury the facts in regard to these vouchers, that there were surrounding them such circumstances of suspicion as justified the assumption that they were fraudulent or void for any or either of the above reasons. If Grayson had ceased to be an officer authorized to certify in respect to those matters that came within his exclusive official cognizance, by reason of being ordered to another post of military duty, then the legal proposition for which the Court contends cannot be admitted. The right and duty of Lieut. Col. Grayson to close up his official business at the post of duty, where these transactions occurred, cannot be denied. He had purchased and received the supplies; he had accounted for them on his provision returns; he had issued the vouchers upon which the previous payments had been made; he knew the price at which the supplies had been purchased, and where delivered; and he knew better than any other officer could know how much had been paid, and what amount was due on account of *supplies purchased by him from Hart;* he was still a commissioned officer of the army, with all the rights and duties incident to his official position and military rank; he cercified to facts within his official knowledge; his certificate is not in the usual form, because the Secretary of War had, by an order dated May 11, 1861, directed that no further payments should be made to Simeon Hart on account of his contracts with the Gevernment. The certificate was changed to meet the circum-

stances created by the special order of the War Department. All the essential facts required by law to be stated in the certificate are found therein. It refers to certain contracts which are in the record. It assumes to correct an error of fact in regard to the price to be paid for flour delivered at certain points named in the contracts, and the corrections are in accordance with the prices specified in the contracts referred to in the voucher; and the provision returns of Lieut. Col. Grayson, for the month of April, 1861, show the purchase from Hart of 32,000 and 17,800 pounds of flour (Finding XII., Rec., p. 34), and these are two of the deliveries of flour to which Col. Grayson referred in the voucher signed by him on thr 21st of June, 1861.

The claimant's contention is, that this voucher is not to be deprived of its legal character as evidence upon mere *suspicion* that the officer who issued it had become a party to the perpetration of a fraud upon the United States, by issuing, in his official character, a false voucher, *because he was about to join the rebellion.* It is respectfully submitted that the fact of an officer joining the late rebellion, although he resigned his commission in the United States army for that purpose, is not, of itself, sufficient evidence upon which to convict that officer of issuing in his official character a false and fraudulent voucher and certificate.

If the Court is to determine this important legal question, upon the theory, that, because Col. Grayson became disloyal to his government, he therefore reversed the practices of a long life of honorable official duty, and immediately engaged in the work of devising means to rob his Government of money and himself of honor, then we suggest to the Court that it may with propriety take into consideration the fact, which the Court of Claims evidently ignored, that Col. Grayson, turned over to Col. Hatch, his successor in office, all the public property in his official custody, as

well as public money to the amount of *forty-three thousand seven hundred and fifty-two dollars and seventeen cents.*

These facts were shown not only in the papers transmitted in this case to the Court of Claims by the Secretary of War, but also in the record in the case of McKnight (13, Court of Claims, 292).

It is submitted in conclusion, therefore, that upon all these considerations, the judgment of the Court of Claims should be reversed, and this cause remanded to that Court, with instructions to render a judgment in favor of the appellant for the sum of *eighteen thousand three hundred and ten dollars and eighty five cents.*

JOHN J. WEED,
Attorney for Appellant.

118-62

SUPREME COURT U. S.
FILED
MAR 22 1886
JAMES H. McKENNEY,
CLERK

In the Supreme Court of the United States.

JUAN S. HART, ADMINISTRATOR OF THE estate of Simeon Hart, deceased, appellant,
vs.
THE UNITED STATES.
No. 198.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

JUAN S. HART, ADMINISTRATOR OF THE estate of Simeon Hart, deceased, appellant,
vs.
THE UNITED STATES.
No. 198.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

This case was transmitted to the Court of Claims by the Secretary of War under the provisions of section 1063 of the Revised Statutes. The letter of the Secretary of War transmitting the case will be found on page 15 of the printed record. On the 9th day of January, 1874, the claimant filed in the Court of Claims his petition, in which he sought to recover from the United States the sum of $50,391.52, made up of certain specific items enumerated in the said petition. On the 7th day of June, 1880, the Court of Claims rendered judgment dismissing the petition. On January 31, 1881, an order was made for a new trial, and the cause was reargued and submitted

on the 3d and 4th of May, 1881. On May 16, 1881, the Court of Claims again rendered judgment dismissing the petition for want of jurisdiction as to so much of the claimant's petition as relates to claims or demands which accrued prior to the 13th day of April, 1861; and as to so much of the petition as relates to claims and demands which accrued on or since the 13th day of April, 1861, the petition was dismissed on the merits. The fourteenth finding of fact by the Court of Claims, page 35 of the printed record, is as follows:

> There is nothing due from the United States to the claimant for flour delivered after April 13, 1861. The United States paid the said Hart, or his assignees, for flour alleged to have been delivered after April 13, 1861, but never delivered, more than the amounts claimed in this suit as due for corn and forage, said payments being made partly in cash to him or his assignees and partly by a credit allowed him as security for Grayson's faithful performance of his official duties, as shown in the McKnight case.

The question now submitted to this court is whether or not the Court of Claims erred in its conclusions of law. We have nothing to add to the views so well expressed by the Court of Claims in its opinion pronounced on the first trial (a copy of which is hereto appended) and also in its opinion pronounced on the last trial, which will be found on pages 40, 41, 42, 43, 44, 45, 46, 47, 48 of the printed record.

Very respectfully,

JOHN GOODE,
Solicitor-General.

APPENDIX.

This claim was transmitted to the court by the Secretary of War on the 13th November, 1873. The claimant rests his claim upon five vouchers so transmitted by the Secretary, and upon other documentary evidence from the War and Treasury Departments. Most of the transactions took place between March 3, 1861, and June 21, 1861, in Texas or on its borders. The claimant relies upon vouchers certified by officers of the Army in the usual form to establish the performance of the services and the delivery of the supplies sued for and the worth of the same.

It has been the practice in this court to regard a voucher in the official form, certified in the usual way by the properly qualified officer, as *prima facie* evidence of the facts stated in it. But we have never held it to be conclusive evidence of those facts. It is always open to the Government to contradict it. And in a case like the present, where some of the transactions took place during the fermentation just preceding the resort to arms and the remainder after the war began, and two of the certifying officers went into the insurgent service, and where the claimant's intestate was a purveyor to the enemy's forces, and was at the same time supplying the United States, trying to earn an honest penny out of both, the court should scrutinize the evidence to support a *prima facie* case with some care.

The first claim rests upon the evidence of the certificate of Lieutenant Jackson. It is for 30,000 pounds of flour delivered at Fort Bliss on the 3d March, 1861. A voucher for it was audited and approved at the Treasury in May, 1861, and a requisition issued for payment.

The requisition was never paid. It was probably recalled, as it has disappeared. On the other hand, it appears by the abstract of purchases made by Lieutenant Jackson for Fort Bliss during the first quarter of 1861, that on the 3d March there was but one purchase made, which was for 32,000 pounds of flour, and that this claim was paid on the 27th March, 1861. It is possible that this fact might be explained. If we did not find insuperable objections in law on the other grounds to a recovery, we might be willing to give a new hearing for the purpose of an explanation. Under the circumstances we have put all the facts in our finding, and have found as a resulting fact that Hart delivered to the United States at Fort Bliss, in March, 1861, no flour except the 32,000 pounds, for which he has been paid in full. If the Supreme Court on appeal holds that we are mistaken as to the law, enough facts will be before it to enable it to shape its mandate as it may deem just to the claimant.

The claim certified to in Jackson's second voucher is open to a similar objection and has been treated in a similar way.

The claim in the voucher certified to by Grayson is a claim for errors in former vouchers. It is open to grave objections as to its appearance and form, and purports to have been certified by Grayson after he was relieved and after he had ceased to be a certifying officer. We have also in this case stated the facts in detail, and our conclusions as a resulting fact.

As to the supplies referred to in the two vouchers certified by Treacy, there is some collateral evidence that they were received by the defendants. We have also put this documentary evidence in the findings. So far, however, as the proof rests upon Treacy's certificate, it is inadmissible, for that certificate is absolutely void. It was made after Hart had joined the rebels and was supplying their forces, which were gathered in Texas for the purpose of invading New Mexico. It was not within the power of a

loyal citizen within the United States to give to an enemy who was at that time within the enemy's lines an evidence of debt which should be valid on the return of peace. The document on its face is void. The same may be said of Grayson's certificate.

Some of the claims are open to a further fatal objection. By the joint resolution of March 2, 1867, which is embodied in the Revised Statutes, section 3480, Congress resolved:

> That until otherwise ordered it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government which accrued or existed prior to the 13th day of April, A. D. 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion; or in favor of any person who, during said rebellion, was not known to be opposed thereto, and distinctly in favor of its suppression; and no pardon hereto foregranted or hereafter to be granted shall authorize the payment of such account, claim, or demand until this resolution is modified or repealed: *Provided*, That this resolution shall not be construed to prohibit the payment of claims founded upon contracts made by any of the departments where such claims were assigned, or contracted to be assigned, prior to April 1, 1861, to creditors of said contractors, loyal citizens of loyal States, in payment of debts incurred prior to March 1, 1861.

The alleged purchases set forth in both of Jackson's and in one of Treacy's vouchers were prior to April 13, 1861. Those referred to in Grayson's took place in April, 1861, but whether before or after the 13th does not appear, except by conjecture. A large part of the claims sued for came within the date named in that resolution. They were in favor of a person who promoted, encouraged,

and sustained the rebellion. They were not assigned prior to April 1, 1861. Those claims, therefore, come directly within the terms of the act.

The claimant alleges that Hart was pardoned. The allegation was not traversed and the fact is not proved; that is, however, immaterial. If proved it would not authorize officers of the Government to pay these claims. A pardon restores to civil rights, to the enjoyment of property, to the right to sue, to the right to do military duty, to the right to exercise the franchise, and to hold office, but it does not confer the right to take money from the Treasury of the United States, except as appropriated by Congress. "No money shall be drawn from the Treasury but in consequence of appropriations made by law." (Constitution, sec. ix, par. 7.) When Congress enacted that money appropriated should not be paid on a certain class of contracts to persons who had promoted the rebellion, the pardon of such persons would not have enlarged the powers of the ministerial officer if the statute had continued silent. But the statute provides for the contingency, and says that the pardon shall not be construed to authorize the payment. It is entirely within the power of Congress to indicate a class of persons who shall not be paid out of general appropriations, but shall come to Congress for their relief.

The Secretary of War, being precluded from paying this claim, could not transmit it here to seek its payment under the general appropriations made by Congress to pay the judgments of this court. That would be making the Treasury do indirectly what Congress has said it cannot do directly. Were we to render judgment in the claimant's favor on such claims we should invite the officers of the Treasury to do an act, under cover of our judgment, which Congress plainly intended that they should not have authority to do in any contingency.

We are not required to determine whether we should be authorized to render judgment against the Government

on this class of claims if the claimant had appeared here on his own motion. We confine ourselves to this, that when the head of an executive department is forbidden by law to pay a claim there can arise no disputed fact, no controverted question of law, nothing in which our decision can affect a class of cases, nothing in which it can furnish a precedent for the future action of an executive department, nothing in which any authority, right, privilege, or exemption can be claimed or denied under the Constitution of the United States to warrant the transmission of the claim to this court, or to confer upon this court a jurisdiction derived through the department which is expressly denied to the department. The duty of the executive officer is to deny the claim irrespective of all such consideration. He has no power to assist the claimant to any other remedies.

The court is therefore without jurisdiction of the claims which come within the statute, and for that reason as to those claims, and for the reasons already given as to the other, the judgment of the court is that the claimant's petition be dismissed.

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